

## **FINAL STATEMENT OF REASONS**

The Initial Statement of Reasons (ISOR) is incorporated by reference.

### **UPDATES TO THE INITIAL STATEMENT OF REASONS**

The Notice of Proposed Emergency Regulations was published on August 24, 2007. The Notice of Change to Regulations was mailed the same day. The public hearing was held on October 17, 2007. No one provided oral comment at the public hearing. During the 45-day comment period, 153 written comments were received. These comments are discussed below under the heading, “*Comments Received During 45-Day Comment Period.*” During a review of these comments, it was determined that some should be included in a modified text. These changes and reasons for them are found below under the heading, “*Changes to the Text of Proposed Regulations.*” In addition, as an accommodation to comments received, Pages 7, 18, 29, 40, and 53, of the Authorized Personal Property Schedule (APPS), a document that is incorporated by reference into these regulations, were revised in the category of Correspondence Courses. These revisions, and reasons for them, are found below under the heading, “*Changes to Authorized Personal Property Schedule.*”

A 15-Day Renotice, which included the amended text and revised pages of the APPS, was distributed on November 5, 2007, to the 153 commenters who responded during the initial 45-day comment period. During the 15-Day comment period, seven comments were received. These comments are discussed below under the heading, “*Comments Received During First 15-Day Renotice.*” As an accommodation to comments received, Page 29 of the APPS was revised in the category of Correspondence Courses. These revisions, and reasons for them, are found below under the heading, “*Changes to Authorized Personal Property Schedule.*”

On January 10, 2008, CDCR submitted a request to the Office of Administrative Law (OAL) for an Emergency Readoption of these regulations. This request was approved on January 23, 2008. During the review of this request, OAL suggested revisions to the text and the APPS for additional clarity, consistency, and accuracy. A Second 15-Day Renotice, which included the amended text and APPS, was distributed on March 3, 2008, to the 153 commenters who responded during the initial 45-day comment period. These revisions, and reasons for them, are found below under the heading, “*Changes to the Text of Proposed Regulations.*” Discussion of the revisions to the APPS are found below under the heading “*Changes to Authorized Personal Property Schedule.*” During the 15-day comment period, five comments were received. These comments are discussed below under the heading, “*Comments Received During Second 15-Day Renotice.*”

On March 25, 2008, a Third 15-Day Renotice, which included the amended text, was distributed to the 153 commenters who had responded during the initial 45-day comment period. This third notice included changes to text that were overlooked in the First and Second 15-Day Renotices. These changes, and reasons for them, are found below under the heading, “*Changes to the Text of Proposed Regulations.*” During the 15-day comment period, one comment was received. This comment is discussed below under the heading, “*Comments Received During Third 15-Day Renotice.*”

## **DETERMINATION:**

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected persons.

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the facts, evidence, and documents initially identified in the Initial Statement of Reasons support an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

## **ASSESSMENTS, MANDATES AND FISCAL IMPACT:**

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing business, or create or expand business in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not directly affected by the internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

## **CHANGES TO TEXT OF PROPOSED REGULATIONS**

**Subsection 3190(a) is unchanged.**

**The first paragraph of Subsection 3190(b) is unchanged.**

**Subsection 3190(b)(1) is amended.**

*The following updates to text were included in the 2<sup>nd</sup> Notice of Change to Text.*

- The revision date of the APPS is changed from 2-1-07 to 2-1-08. This change is necessary because the APPS has been revised since the initial filing of these regulations. Full discussion of the revisions to the APPS is discussed below under “*Changes to Authorized Personal Property Schedule.*”
- A sentence is added to read, “This personal property schedule applies to the following facilities.” This provides clarification that the facility housing levels that are listed are subject to subsection 3190(b)(1).
- The description of the Reception Center mission is deleted because the detail of the mission description went beyond the intent of these regulations.

**Subsections 3190(b)(1)(A) through 3190(b)(1)(D) are amended.**

*The following update to text was included in the 2<sup>nd</sup> Notice of Change to Text.*

For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190(b)(1)(E) is amended.**

*The following updates to text were included in the 2<sup>nd</sup> Notice of Change to Text.*

- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.
- The word “and” is deleted for grammatical clarity.

**Subsection 3190(b)(1)(F) is amended.**

*The following update to text was included in the 2<sup>nd</sup> Notice of Change to Text.*

For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**New Subsection 3190(b)(1)(G) is adopted.**

*The following update to text was included in the 2<sup>nd</sup> Notice of Change to Text.*

For clarification and correction purposes, this new subsection is added to specify California Correctional Institution – Reception Center Housing is subject to subsection 3190(b)(1). This corrects an inadvertent omission from the original and first 15-day Renote text.

**New Subsection 3190(b)(1)(H) is adopted.**

*The following update to text was included in the 2<sup>nd</sup> Notice of Change to Text.*

For clarification and correction purposes, this new subsection is added to specify California State Prison, Los Angeles County – Reception Center Housing is subject to subsection 3190(b)(1). This corrects an inadvertent omission from the original and first 15-day Renote text.

**New Subsection 3190(b)(1)(I) is adopted.**

*The following update to text was included in the 2<sup>nd</sup> Notice of Change to Text.*

For clarification and correction purposes, this new subsection is added to specify High Desert State Prison – Reception Center Housing is subject to subsection 3190(b)(1). This corrects an inadvertent omission from the original and first 15-day Renote text.

**Subsection 3190(b)(2) is amended.**

*The following updates to text were included in the 2<sup>nd</sup> Notice of Change to Text.*

- The numeral “I” is added to the APPS description to read, “Levels I, II, III, Male Conservation Camps and Community Correctional Facilities.” This corrects an oversight on the previous text.
- The revision date of the APPS is changed from 2-1-07 to 2-1-08. This change is necessary because the APPS has been revised since the initial filing of these regulations. Full discussion of the revisions to the APPS is discussed below under “*Changes to Authorized Personal Property Schedule.*”
- A sentence is added to read, “This personal property schedule applies to the following facilities.” This provides clarification that the facility housing levels that are listed are subject to subsection 3190(b)(2).

- The description of the Levels I, II, III, Male Conservation Camps and Community Correctional Facilities mission is deleted because the detail of the mission description went beyond the intent of these regulations.

**Subsection 3190(b)(2)(A) through 3190(b)(2)(B) are amended.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

A non-substantive grammatical correction was made removing the comma at the end of the sentence and replacing with a period.

**Subsection 3190(b)(2)(C) is amended.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190(b)(2)(D) through 3190(b)(2)(G) are amended.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

A non-substantive grammatical correction was made removing the comma at the end of the sentence and replacing with a period.

**Subsection 3190(b)(2)(H) is amended.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190(b)(2)(I) through 3190(b)(2)(J) are amended.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

A non-substantive grammatical correction was made removing the comma at the end of the sentence and replacing with a period.

**Subsection 3190(b)(2)(K) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Levels III and IV and Administrative Segregation housing within Pleasant Valley State Prison are deleted as these levels are not subject to subsection 3190(b)(2). These housing levels are located in the regulation text under subsection 3190(b)(3)(G). This corrects an oversight on the original and first 15-day Renote text.
- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

*The following updates to text were included the 3<sup>rd</sup> Notice of Change to Text.*

- The words, “General Population Housing” are added to the sentence to read “Pleasant Valley State Prison – Level I General Population Housing only.” This is necessary to create consistency with the other facility levels listed throughout the text, and corrects an oversight on the 2<sup>nd</sup> Notice of Change to Text.

**Subsection 3190(b)(2)(L) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Levels III and IV General Population and Administrative Segregation housing within California Substance Abuse Treatment Facility and State Prison, Corcoran, are deleted as these levels are

not subject to subsection 3190(b)(2). These housing levels are located in the regulation text under subsection 3190(b)(3)(H). This corrects an oversight on the original and first 15-day Renotice text.

- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

*The following updates to text were included the 3rd Notice of Change to Text.*

- The word, “Housing” is added to the sentence to read “California Substance Abuse Treatment Facility and State Prison, Corcoran – Levels I and II General Population Housing only.” This is necessary to create consistency with the other facility levels listed throughout the text, and corrects an oversight on the 2<sup>nd</sup> Notice of Change to Text.

**Subsections 3190(b)(2)(M) through 3190(b)(2)(O) are amended.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190(b)(2)(P) is amended.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

The word “and” is deleted for grammatical clarity.

**Subsection 3190(b)(2)(Q) is amended.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**New Subsection 3190(b)(2)(R) is adopted.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

For clarification and correction purposes, this new subsection is added to specify Calipatria State Prison – Level I General Population Housing is subject to subsection 3190(b)(2). This corrects an inadvertent omission from the original and first 15-day Renotice text.

**New Subsection 3190(b)(2)(S) is adopted.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

For clarification and correction purposes, this new subsection is added to specify Centinela State Prison – Level I General Population Housing is subject to subsection 3190(b)(2). This corrects an inadvertent omission from the original and first 15-day Renotice text.

**New Subsection 3190(b)(2)(T) is adopted.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

For clarification and correction purposes, this new subsection is added to specify California Men’s Colony – Levels I and II General Population Housing is subject to subsection 3190(b)(2). This corrects an inadvertent omission from the original and first 15-day Renotice text.

**New Subsection 3190(b)(2)(U) is adopted.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

For clarification and correction purposes, this new subsection is added to specify California Medical Facility – Levels I and II General Population Housing is subject to subsection 3190(b)(2). This corrects an inadvertent omission from the original and first 15-day Renote text.

**New Subsection 3190(b)(2)(V) is adopted.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

For clarification and correction purposes, this new subsection is added to specify California State Prison, Los Angeles County – Level I General Population Housing is subject to subsection 3190(b)(2). This corrects an inadvertent omission from the original and first 15-day Renote text.

**New Subsection 3190(b)(2)(W) is adopted.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

For clarification and correction purposes, this new subsection is added to specify Mule Creek State Prison – Levels I and II General Population Housing is subject to subsection 3190(b)(2). This corrects an inadvertent omission from the original and first 15-day Renote text.

**New Subsection 3190(b)(2)(X) is adopted.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

For clarification and correction purposes, this new subsection is added to specify California Correctional Institution – Levels I and II General Population Housing is subject to subsection 3190(b)(2). This corrects an inadvertent omission from the original and first 15-day Renote text.

**New Subsection 3190(b)(2)(Y) is adopted.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

For clarification and correction purposes, this new subsection is added to specify Corcoran State Prison – Level I General Population Housing is subject to subsection 3190(b)(2). This corrects an inadvertent omission from the original and first 15-day Renote text.

**New Subsection 3190(b)(2)(Z) is adopted.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

For clarification and correction purposes, this new subsection is added to specify High Desert State Prison – Levels I and II General Population Housing is subject to subsection 3190(b)(2). This corrects an inadvertent omission from the original and first 15-day Renote text.

**New Subsection 3190(b)(2)(AA) is adopted.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

- For clarification and correction purposes, this new subsection is added to specify California State Prison, Sacramento – Level I General Population Housing is subject to subsection 3190(b)(2). This corrects an inadvertent omission from the original and first 15-day Renote text.

*The following update to text was included the 3<sup>rd</sup> Notice of Change to Text.*

- The word Level is pluralized by adding the letter “s” and the words, “and II General Population Housing” are added to the sentence. This corrects an oversight on the 2<sup>nd</sup> 15-day Renote text where housing Levels I and II were deleted from subsection 3090(b)(4)(F) and relocated to this subsection; however, Level II was inadvertently left off of the relocation. The corrected subsection now reads, “California State Prison, Sacramento – Levels I and II General Population Housing only.”

**New Subsection 3190(b)(2)(BB) is adopted.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

- For clarification and correction purposes, this new subsection is added to specify Pelican Bay State Prison – Level I General Population Housing is subject to subsection 3190(b)(2). This corrects an inadvertent omission from the original and first 15-day Renotice text.

*The following updates to text were included the 3<sup>rd</sup> Notice of Change to Text.*

- The words, “General Population Housing” are added to the sentence to read “Pelican Bay State Prison – Level I General Population Housing only.” This is necessary to create consistency with the other facility levels listed throughout the text, and corrects an oversight on the 2<sup>nd</sup> Notice of Change to Text.

**New Subsection 3190(b)(2)(CC) is adopted.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

- For clarification and correction purposes, this new subsection is added to specify Kern Valley State Prison – Level I General Population Housing is subject to subsection 3190(b)(2). This corrects an inadvertent omission from the original and first 15-day Renotice text.

*The following updates to text were included the 3<sup>rd</sup> Notice of Change to Text.*

- The words, “General Population Housing” are added to the sentence to read “Kern Valley State Prison – Level I General Population Housing only.” This is necessary to create consistency with the other facility levels listed throughout the text, and corrects an oversight on the 2<sup>nd</sup> Notice of Change to Text.

**New Subsection 3190(b)(2)(DD) is adopted.**

*The following update to text was included the 3<sup>rd</sup> Notice of Change to Text.*

For clarification and correction purposes, this new subsection is added to specify Salinas Valley State Prison – Levels I and II General Population Housing are subject to subsection 3190(b)(2). This corrects an oversight on the 2<sup>nd</sup> 15-day Renotice text where housing Levels I and II were deleted from subsection 3190(b)(4)(G), and were to be relocated elsewhere within the regulation text, but this relocation was not made.

**Subsection 3190(b)(3) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- The revision date of the APPS is changed from 2-1-07 to 2-1-08. This change is necessary because the APPS has been revised since the initial filing of these regulations. Full discussion of the revisions to the APPS is discussed below under “*Changes to Authorized Personal Property Schedule.*”
- A sentence is added to read, “This personal property schedule applies to the following facilities.” This provides clarification that the facility housing levels that are listed are subject to subsection 3190(b)(3).
- The description of the Levels III and IV mission is deleted because the detail of the mission description went beyond the intent of these regulations.

**Subsection 3190(b)(3)(A) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Level I General Population housing within Calipatria State Prison is deleted because it is not subject to subsection 3190(b)(3). This housing level has been relocated in the regulation text to

the newly adopted subsection 3190(b)(2)(R). This corrects an oversight on the original and first 15-day Renotice text.

- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190(b)(3)(B) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Level I General Population Housing within Centinela State Prison is deleted because it is not subject to subsection 3190(b)(3). This housing level is relocated in the regulation text to the newly adopted subsection 3190(b)(2)(S). This corrects an oversight on the original and first 15-day Renotice text.
- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190 (b)(3)(C) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Levels I and II General Population Housing within California Men’s Colony are deleted because they are not subject to subsection 3190(b)(3). These housing levels are relocated in the regulation text to the newly adopted subsection 3190(b)(2)(T). This corrects an oversight on the original and first 15-day Renotice text.
- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190(b)(3)(D) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Levels I and II General Population Housing within California Medical Facility are deleted because they are not subject to subsection 3190(b)(3). These housing levels are relocated in the regulation text to the newly adopted subsection 3190(b)(2)(U). This corrects an oversight on the original and first 15-day Renotice text.
- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190(b)(3)(E) is amended.**

*The following update to text is non-substantive and clarifies without materially altering the intent of the regulation.*

- The words “General Population” are added after Level IV. This is necessary to create consistency with the other facility levels listed throughout the text.

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Reception Center and Level I General Population Housing within California State Prison, Los Angeles County are deleted because they are not subject to subsection 3190(b)(3). Reception Center Housing is relocated in the regulation text to the newly adopted subsection 3190(b)(1)(H). Level I General Population Housing is relocated in the regulation text to the newly adopted subsection 3190(b)(2)(V). This corrects an oversight on the original and first 15-day Renotice text.
- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.



**Subsection 3190(b)(3)(F) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Levels I and II General Population Housing within Mule Creek State Prison are deleted because they are not subject to subsection 3190(b)(3). These housing levels are relocated in the regulation text to the newly adopted subsection 3190(b)(2)(W). This corrects an oversight on the original and first 15-day Renotice text.
- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190 (b)(3)(G) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Level I General Population Housing within Pleasant Valley State Prison is deleted because it is not subject to subsection 3190(b)(3). This housing level is located in the regulation text under subsection 3190(b)(2)(K). This corrects an oversight on the original and first 15-day Renotice text.
- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190(b)(3)(H) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Levels I and II General Population Housing within California Substance Abuse Treatment Facility and State Prison, Corcoran, are deleted because they are not subject to subsection 3190(b)(3). These housing levels are located in the regulation text under subsection 3190(b)(2)(L). This corrects an oversight on the original and first 15-day Renotice text.
- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.
- The word “and” is deleted for grammatical clarity.

**Subsection 3190(b)(3)(I) is amended.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190(b)(4) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- The revision date of the APPS is changed from 2-1-07 to 2-1-08. This change is necessary because the APPS has been revised since the initial filing of these regulations. Full discussion of the revisions to the APPS is discussed below under “*Changes to Authorized Personal Property Schedule.*”
- A sentence is added to read, “This personal property schedule applies to the following facilities.” This provides clarification that the facility housing levels that are listed are subject to subsection 3190(b)(4).
- The description of the Levels III and IV mission is deleted because the detail of the mission description went beyond the intent of these regulations.

**Subsection 3190(b)(4)(A) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Reception Center and Levels I and II General Population Housing levels within California Correctional Institution are deleted because they are not subject to subsection 3190(b)(4). Reception Center Housing is relocated in the regulation text to the newly adopted subsection 3190(b)(1)(G). Levels I and II General Population Housing are relocated in the regulation text to the newly adopted subsection 3190(b)(2)(X). This corrects an oversight on the original and first 15-day Renotice text.
- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190(b)(4)(B) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Level I General Population Housing within Corcoran State Prison is deleted because it is not subject to subsection 3190(b)(4). This housing level is relocated in the regulation text to the newly adopted subsection 3190(b)(2)(Y). This corrects an oversight on the original and first 15-day Renotice text.
- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190(b)(4)(C) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Reception Center and Levels I and II General Population Housing within High Desert State Prison are deleted because they are not subject to subsection 3190(b)(4). Reception Center Housing is relocated in the regulation text to the newly adopted subsection 3190(b)(1)(I). Levels I and II General Population Housing are relocated in the regulation text to the newly adopted subsection 3190(b)(2)(Z). This corrects an oversight on the original and first 15-day Renotice text.
- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190(b)(4)(D) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Level I General Population Housing within Kern Valley State Prison is deleted because it is not subject to subsection 3190(b)(4). This housing level is relocated in the regulation text to the newly adopted subsection 3190(b)(2)(CC). This corrects an oversight on the original and first 15-day Renotice text.
- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190(b)(4)(E) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Level I General Population Housing within Pelican Bay State Prison is deleted because it is not subject to subsection 3190(b)(4). This housing level is relocated in the regulation text to the newly adopted subsection 3190(b)(2)(BB). This corrects an oversight on the original and first 15-day Renotice text.
- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190(b)(4)(F) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Levels I and II General Population Housing within California State Prison, Sacramento are deleted because they are not subject to subsection 3190(b)(4). These housing levels are relocated in the regulation text to the newly adopted subsection 3190(b)(2)(AA). This corrects an oversight on the original and first 15-day Renotice text.
- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.
- The word “and” is deleted for grammatical clarity.

**Subsection 3190(b)(4)(G) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- Levels I and II General Population Housing within Salinas Valley State Prison are deleted because they are not subject to subsection 3190(b)(4). These housing levels are relocated in the regulation text to the newly adopted subsection 3190(b)(2)(DD). This corrects an oversight on the original and first 15-day Renotice text.
- For clarity, the word “only” is added to the end of the sentence. This removes any confusion on which housing units the personal property schedule applies to.

**Subsection 3190(b)(5) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

- The revision date of the APPS is changed from 2-1-07 to 2-1-08. This change is necessary because the APPS has been revised since the initial filing of these regulations. Full discussion of the revisions to the APPS is discussed below under “*Changes to Authorized Personal Property Schedule.*”
- A sentence is added to read, “This personal property schedule applies to the following facilities.” This provides clarification that the facility housing levels that are listed are subject to subsection 3190(b)(5).
- The description of the Female Offenders Programs mission is deleted because the detail of the mission description went beyond the intent of these regulations.

**Subsection 3190(b)(5)(A) is amended.**

*The following update to text was included the 2<sup>nd</sup> Notice of Change to Text.*

A non-substantive grammatical correction was made removing the comma at the end of the sentence and replacing with a period.

**Subsection 3190(b)(5)(B) is amended.**

*The following updates to text were included the 2<sup>nd</sup> Notice of Change to Text.*

The word “and” is deleted for grammatical clarity.

**Subsection 3190(b)(5)(C) is unchanged.**

**Last paragraph of Subsection 3190(b) is added.**

*The following update to text is non-substantive and clarifies without materially altering the intent of the regulation.*

A paragraph is added to make clear that facilities are subject to the Authorized Personal Property Schedule exemptions that have been granted to particular institutions.

**Subsections 3190(c) through 3190(h) are unchanged.**

**Subsection 3190(i) is amended.**

*The following updates to text are non-substantive and clarifies without materially altering the intent of the regulation.*

- The first sentence is amended to add the words, "...publications (including...)" for clarity and consistency with the language in subsections 3191(i)(2) and 3191(i)(7).

*The following updates to text were included the 1st Notice of Change to Text.*

- The first sentence has been corrected to add a reference to subsection 3190(i)(2). This provides clarification that subsection 3190(i)(2), in addition to subsection 3190(i)(7), gives an exception to the rule that special purchase vendors must be locally approved.

**Subsection 3190(i)(1) is unchanged.**

**Subsection 3190(i)(2) is amended.**

*The following updates to text were included the 1st Notice of Change to Text.*

Two sentences are added to read, "There shall be no "Approved Vendor Lists" for any legal publications. Inmates may receive legal publications from any publisher, book store or book distributor that does mail order business." This subsection carves out an exception, pertaining to legal publications, to the general rule that special purchase vendors must be locally approved. It is similar to subsection 3190(i)(7), but is included here to ensure that the exception applies to legal materials. CDCR shall allow legal publications to be made available to inmates from any publisher, bookstore, or book distributor that does a mail order business. This subsection parallels a pending amendment to CDCR regulations for inmate mail.

**Subsections 3190(i)(3) through 3190(i)(6) are unchanged.**

**Subsection 3190(i)(7) is amended.**

*The following updates to text were included the 1st Notice of Change to Text.*

The first sentence is amended to add, "All publication, including..." to the beginning of the sentence. A second sentence is added to read, "Inmates may receive publications from any publisher, book store, or book distributor that does mail order business." This subsection carves out an exception, pertaining to all publications, to the general rule that special purchase vendors must be locally approved. It is similar to subsection 3190(i)(2), but is included here to ensure that the exception applies to all publications. CDCR shall allow any publications to be made available to inmates from any publisher bookstore or book distributor that does a mail order business. This subsection parallels a pending amendment to CDCR regulations for inmate mail.

**Subsections 3190(j) through 3190(t) are unchanged.**

**Reference citation is added.**

Penal Code Section 2086 is added as a reference citation to highlight the warden's authority to make temporary rules and regulations in case of emergencies.

**Subsections 3191(a) through 3191(b) are unchanged.**

**Subsection 3191(c) is amended.**

*The following update to text is non-substantive and clarifies without materially altering the intent of the regulation.*

- The second sentence is amended to add a cross-reference to subsections 3191(c)(1) through 3191(c)(5) for added clarity.

*The following updates to text were included the 1st Notice of Change to Text.*

- The fourth sentence is amended to delete the words, "will be disposed of by staff determination," and replaced with, "shall be retained by staff as may be required by ongoing investigation or court order. Following the completion of all disciplinary, investigative, or court requirements, the contraband property shall be disposed of according to institutional/facility procedures." This provision ensures that CDCR shall preserve the evidence of contraband property during the course of an investigation or pursuant to a court order. This provision additionally ensures that staff members shall follow the local prison procedures to dispose of contraband after the conclusion of any disciplinary, investigative, or court requirements.

**UPDATES TO THE AUTHORIZED PERSONAL PROPERTY SCHEDULE**  
**(Incorporated by Reference)**

**The Authorized Personal Property Schedule (APPS) is amended in its entirety to:**

*The following updates were included the 2nd Notice of Change to Text.*

- All references to Revision Date are updated from 2-1-07 to 2-1-08.
- Non-substantive formatting and typographical errors and/or omissions are corrected to ensure clarity and consistency throughout the document.

**Page 1 is amended.**

*The following update was included the 2nd Notice of Change to Text.*

Added the numeral "I" under Table of Contents to read, "Levels I, II, III, Male Conservation Camps and Community Correctional Facilities." This corrects an oversight on the previous version of the APPS.

**Page 2 is amended.**

*The following updates were included the 2nd Notice of Change to Text.*

- Wasco State Prison is added. This corrects an oversight on the previous version of the APPS.
- A special Note is added for additional clarity.
- Added the definition of "YES" for additional clarity. This removes any confusion as to the definition of the YES notation that appears throughout the APPS.

**Pages 3 through 6 are unchanged.**

**Page 7 is amended.**

*The following update was included the 1st Notice of Change to Text.*

Updated “0” to “YES” in the category of Correspondence Courses under the ASU category. This change is made in accommodation to comments received during the original 45-day comment period. The "0" is changed to "YES" for correspondence courses because access to this educational material is deemed beneficial to inmate rehabilitation. The "YES" indicates that there is no limit to the number of correspondence courses an inmate may possess, within the 6 cubic foot property limit.

**Pages 8 through 11 are unchanged.**

**Page 12 is amended.**

*The following updates were included the 2nd Notice of Change to Text.*

- Added the numeral “I” to the Title to read, “Levels I, II, III, Male Conservation Camps and Community Correctional Facilities.” This corrects an oversight on the previous version of the APPS.
- Added California Rehabilitation Center. This corrects an oversight on the previous version of the APPS.

**Page 13 is amended.**

*The following updates were included the 2nd Notice of Change to Text.*

- A special Note is added for additional clarity.
- Added the definition of “YES” for additional clarity. This removes any confusion as to the definition of the YES notation that appears throughout the APPS.

**Pages 14 through 17 are amended.**

*The following updates were included the 2nd Notice of Change to Text.*

Added the numeral “I” to the each Title and subtitle to read, “Levels I, II, III, Male Conservation Camps and Community Correctional Facilities.” This corrects an oversight on the previous version of the APPS.

**Page 18 is amended.**

*The following update was included the 1st Notice of Change to Text.*

- Updated “0” to “YES” in the category of Correspondence Courses under the ASU category. This change is made in accommodation to comments received during the original 45-day comment period. The "0" is changed to "YES" for correspondence courses because access to this educational material is deemed beneficial to inmate rehabilitation. The "YES" indicates that there is no limit to the number of correspondence courses an inmate may possess, within the 6 cubic foot property limit.

*The following update was included the 2nd Notice of Change to Text.*

- Added the numeral “I” to the each Title and subtitle to read, “Levels I, II, III, Male Conservation Camps and Community Correctional Facilities.” This corrects an oversight on the previous version of the APPS.

**Pages 19 through 22 are amended.**

*The following updates were included the 2nd Notice of Change to Text.*

Added the numeral “I” to the each title and subtitle to read, “Levels I, II, III, Male Conservation Camps and Community Correctional Facilities.” This corrects an oversight on the previous version of the APPS.

**Pages 23 is unchanged.**

**Page 24 is amended.**

*The following updates were included the 2nd Notice of Change to Text.*

- A special Note is added for additional clarity.
- Added the definition of “YES” for additional clarity. This removes any confusion as to the definition of the YES notation that appears throughout the APPS.

**Pages 25 through 28 are unchanged.**

**Page 29 is amended.**

*The following update was included the 1st Notice of Change to Text.*

- Updated “0” to “YES” in the category of Correspondence Courses under the ASU category. This change is made in accommodation to comments received during the original 45-day comment period. The "0" is changed to "YES" for correspondence courses because access to this educational material is deemed beneficial to inmate rehabilitation. The "YES" indicates that there is no limit to the number of correspondence courses an inmate may possess, within the 6 cubic foot property limit.

*The following update was included the 2nd Notice of Change to Text.*

- Updated “0” to “YES” in the category of Correspondence Courses under the SHU category. This change is made in accommodation to comments received during the original 45-day comment period. This change was inadvertently left out of the 1<sup>st</sup> Notice of Change to Text and was brought to CDCR’s attention during the 15-day comment period. The "0" is changed to "YES" for correspondence courses because access to this educational material is deemed beneficial to inmate rehabilitation. The "YES" indicates that there is no limit to the number of correspondence courses an inmate may possess, within the 6 cubic foot property limit.

**Pages 30 through 34 are unchanged.**

**Page 35 is amended.**

*The following updates were included the 2nd Notice of Change to Text.*

- A special Note is added for additional clarity.
- Added the definition of “YES” for additional clarity. This removes any confusion as to the definition of the YES notation that appears throughout the APPS.

**Pages 36 through 39 are unchanged.**

**Page 40 is amended.**

*The following update was included the 1st Notice of Change to Text.*

Updated “0” to “YES” in the category of Correspondence Courses under both the SHU and ASU categories. This change is made in accommodation to comments received during the original 45-day comment period. The "0" is changed to "YES" for correspondence courses because access to this educational material is deemed beneficial to inmate rehabilitation. The "YES" indicates that there is

no limit to the number of correspondence courses an inmate may possess, within the 6 cubic foot property limit.

**Pages 41 through 44 are unchanged.**

**Page 45 is amended.**

*The following updates were included the 2nd Notice of Change to Text.*

- A special Note is added for additional clarity.
- Added the definition of “YES” for additional clarity. This removes any confusion as to the definition of the YES notation that appears throughout the APPS.

**Pages 46 through 47 are unchanged.**

**Pages 48 through 52 are amended.**

*The following updates were included the 2nd Notice of Change to Text.*

- For correction purposes, removed the definition of “YES” that is repeated at the bottom of each page, and placed it at the beginning of the Female Offender Program Authorized Personal Property Schedule on Page 45.
- For clarity and correction purposes, removed the asterisks after each occurrence “YES.” These are unnecessary and clutter up the matrix. The definition of “YES” located on Page 45 is sufficient.

**Page 53 is amended.**

*The following update was included the 1st Notice of Change to Text.*

Updated “0” to “YES” in the category of Correspondence Courses under both the SHU and ASU categories. This change is made in accommodation to comments received during the original 45-day comment period. The "0" is changed to "YES" for correspondence courses because access to this educational material is deemed beneficial to inmate rehabilitation. The "YES" indicates that there is no limit to the number of correspondence courses an inmate may possess, within the 6 cubic foot property limit.

**Pages 54 through 55 are amended.**

*The following updates were included the 2nd Notice of Change to Text.*

- For correction purposes, removed the definition of “YES” that is repeated at the bottom of each page, and placed it at the beginning of the Female Offender Program Authorized Personal Property Schedule on page 45.
- For clarity and correction purposes, removed the asterisks after each occurrence “YES.” These are unnecessary and clutter up the matrix. The definition of “YES” located on Page 45 is sufficient.

**Pages 56 through 56 are unchanged.**

**Page 59 is amended.**

*The following updates were included the 2nd Notice of Change to Text.*

- For correction purposes, removed the definition of “YES” that is repeated at the bottom of each page, and placed it at the beginning of the Female Offender Program Authorized Personal Property Schedule on Page 45.



- For clarity and correction purposes, removed the asterisks after each occurrence “YES.” These are unnecessary and clutter up the matrix. The definition of “YES” located on Page 45 is sufficient.

**Page 60 is unchanged.**

### **INCORPORATION BY REFERENCE**

Subsection 3190(b) incorporates by reference the Authorized Personal Property Schedule. This document is lengthy and would be cumbersome and impractical to publish in the California Code of Regulations. The Authorized Personal Property Schedule was made available to the public throughout the rulemaking, and will continue to be made available to the public.

### **SUMMARIES AND RESPONSES TO PUBLIC COMMENTS**

#### **PUBLIC HEARING COMMENTS**

Held October 17, 2007, at 9:00 a.m. – No one commented at the Public Hearing.

#### **COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD:**

##### **COMMENTER #1:**

**Comment A:** Commenter contends that the immediate implementation of the emergency regulations was not in accordance with the Rulemaking procedures set forth in the Administrative Procedures Act (APA). Commenter further contends that the Public Hearing was scheduled after the implementation date of the regulation change and this is not in accordance with the rulemaking procedures set forth in the APA, especially since there is no such necessity of emergency.

**Accommodation:** None.

**Response A:** There is a need to rapidly change the inmate personal property allowances in the APPS to reflect the real world safety and security needs of the field. In working with the OAL, it was determined that the only practical way to accomplish this is through the emergency regulation process. Penal Code Section 5058.3 gives the Department statutory authority to adopt, amend, or repeal regulations as an emergency if the operational needs of the Department so require. The APA was adhered to. Pursuant to Government Code (GC) 11346.4, at least 45 days prior to the hearing and close of the public comment period on the regulations, the notice was filed with, approved by OAL, and mailed to all interested parties. Additionally, the Notice was published in the California Regulatory Notice Register in compliance with GC 11346.4(a)(5).

**Comment B:** Commenter states that the APPS indicates that Security Housing Unit (SHU) inmates housed in Pelican Bay’s SHU will be allowed to possess only five books or magazines; zero tennis shoes; fifteen sheets of paper; and zero correspondence courses.

**Accommodation:** Partial accommodation granted. The APPS was modified in the category of correspondence courses. The change was made from zero to “Yes” for correspondence courses because access to this educational material is beneficial to inmate rehabilitation. The "YES" indicates there is no limit to the number of correspondence courses an inmate may possess, within the six cubic foot property limit. A Notice of Change to Text was sent on November 5, 2007, regarding this change.

**Response B:** There is a need to restrict the amount of allowable property within a SHU as a safety and security issue. SHU inmates are restricted to fifteen sheets of stationery, five greeting cards, and one full pad of legal writing paper at any given time. Personal tennis shoes are not permitted, but state issued tennis shoes are. Possession of personal publications is limited to five, but this restriction does not impact legal material or library books. It has been determined that correspondence courses will be permitted for SHU inmates.

**Comment C:** Commenter contends there are no programs available to indeterminate SHU inmates and when the weather is bad and the televisions go out, then reading material is all that inmates possess. He contends that the majority of indeterminate SHU inmates are housed in SHU as an administrative policy due to their “alleged” prison gang validation, not for disciplinary problems.

**Accommodation:** None.

**Response C:** The reduction from ten books to five is a fifty percent reduction and consistent with the reduction in all material for SHU inmates. This reduction does not restrict access to books or publications as this only represents a limit for personal possession at a given point in time. This restriction does not apply to library books, which any inmate may check out from the library, nor does it limit legal books or legal reference material.

**Comment D:** Commenter contends that one of the reasons for the change is to facilitate searches and says this is absurd. Commenter states that searching ten books or magazines cannot be any more of a burden than searching five books or magazines. Commenter states that there are fluoroscoping machines that facilitate the proper search of inmates’ property.

**Accommodation:** None.

**Response D:** Reducing the amount of books from ten to five is a key to the safety and security of the SHU and the prison as a whole. Inmates routinely use pages from various publications to fashion spears to which a point may be affixed to injure staff. Paper is also used to fashion blow guns and darts, again, to injure staff. The reduction from ten to five is a fifty percent reduction, and consistent with the reduction in all material for SHU inmates. This reduction does not restrict access to books or publications as this only represents a limit for personal possession at a given point in time. This restriction does not apply to library books, which any inmate may check out from the library, nor does it limit legal books or legal reference material. Not only do inmates utilize books for various types of weapons, but also they use the excessive pages as body armor. The pages of books are used by various inmates to wrap around their bodies to protect them from stabbings, etc. In this manner, excess paper materials associated with books and publications encourage conflict between rival inmate factions. Inmates also

place the excessive amounts of paper from books and magazines on the windows of their cells to prevent staff from looking into the cell, creating additional safety and security problems. Inmates will take advantage of this type of concealment to manufacture weapons.

**Comment E:** Commenter contends the regulations state they are affecting some type of incentive program – he would like to know what incentive program. He states that the reduction of books or magazines for SHU inmates for administrative reasons is nothing more than punishment for no infraction.

**Accommodation:** None.

**Response E:** The Department's overall approach to inmate work incentive, behavior, safety, security, and classification is based upon a system of increasing privileges and decreasing restrictions in order to reward positive behavior. SHU inmates are at the extreme end of this approach with few privileges and many restrictions. SHU inmates who wish to better their situation must exhibit behavior that qualifies their transfer from SHU into a General Population housing area. Also, see Commenter #1, Response D.

**Comment F:** Commenter contends that restricting SHU inmates from possessing “personal tennis shoes,” aside from CDCR having lost this exact question in prior court litigation, would waste the taxpayers money in purchasing shoes for every inmate housed in SHU. If inmates are allowed to continue to purchase their own tennis shoes, most inmates would be willing and it would save money. Commenter states that either state issued or personal tennis shoes could be searched through the fluoroscoping machine and metal detectors. He states that inmates would want to keep their personal shoes safe from contraband.

**Accommodation:** None.

**Response F:** SHU inmates have demonstrated the opposite behavior, that is, using personal shoes to hide contraband. The Department does not have the necessary equipment or staffing to adequately search all personal shoes prior to release for outdoor activities. For this reason, state issued tennis shoes are necessary.

**Comment G:** Commenter contends that the Department has changed its mind regarding corresponding with friends and family. He asks how fifteen sheets of stationery could be sufficient to correspond with family, and states that the Department used to encourage the corresponding of inmates with their family, but this regulation is limiting it. Commenter states this does not allow him to exercise his First Amendment right. He contends that fifteen sheets of paper is an extreme exaggerated response to Administrative Segregation in SHU.

**Accommodation:** None.

**Response G:** See Commenter #1, Response B.

**Comment H:** Commenter contends that eliminating of correspondence courses for SHU inmates goes against the new rehabilitation concept of the Department. He states that the Pelican Bay State Prison's Education Department is part of inmate correspondence courses. To remove or deny

these avenues of self-improvement has no justification to CDCR or prison security. He states that it is one thing to consider “alleged security violations,” another to make believe to cover retaliation and/or punishment.

**Accommodation:** Partial accommodation granted. See Commenter #1, Comment B accommodation.

**Response H:** There is a need to restrict the amount of allowable property within a SHU as a safety and security issue. However, it has been determined that correspondence courses will be permitted for SHU inmates.

**Comment I:** Commenter contends that he and his tax-paying family members will fight this regulation and any unreasonable property program change in court.

**Accommodation:** None.

**Response I:** Although the above comment does address an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

## **COMMENTER #2:**

**Comment A:** Commenter contends that the APPS matrix has been around for years and that a lot of changes have been made to reflect new rulings and the realities of actual living in prison.

**Accommodation:** None.

**Response A:** The APPS has been in use since 2006 and the Department agrees that changes have been made to reflect new rulings and the realities of actually living in prison.

**Comment B:** Commenter contends that he has never seen a cell fire in the seven years he has been in prison. Commenter believes they happen, but would like the Department to show the total amount of cell fires prior to the first property restrictions and then now. Commenter contends that it is not an honest reason to use, and suggests the Department install sprinklers in all cells and dayrooms.

**Accommodation:** None.

**Response B:** The cost of installation of sprinklers would be unduly burdensome to the Department and subject to damage and abuse by inmates. The restriction on property was developed to reduce the amount of combustible property available if a cell fire occurred. Inmates have a documented history of starting fires in their cells. These are created nominally for cooking, but have become out of control with tragic results. Another reason for limiting the amount of property is to facilitate searches, a safety and security issue.

**Comment C:** Commenter contends that the extension cord in the APPS is described as a three-prong outlet and states that this is useless and none of his appliances is three-pronged. Commenter states that outlet strips should be allowed, and they should be three to six inches with its own internal breaker. Commenter states this would cut down on cells losing their power, and would protect inmate appliances from voltage surges or if his hot pot falls in the water.

**Accommodation:** None.

**Response C:** Extension cords are restricted to a maximum length of six feet, and are required to be approved by Underwriters Laboratories. However, every local facility has the ability to request an Exemption to this requirement. In addition, extension cords must adhere to requirements established in California Electric Code Section 400.8, and be a three-prong outlet only.

**Comment D:** Commenter contends that by doing a comparison of the Level III and IV Men's APPS (page 23) and Female APPS (page 45); there are differences in the allowed personal clothing and hygiene products. Females are allowed two pairs of pajamas and males none, females are allowed one robe and males none, and that this pattern is repeated for sandals, scarves, and walking shoes. Commenter states this is disparity of treatment, that woman are "more human" in that males do not need something extra to sleep in. Commenter states he has no choice as to what he sleeps in; however, on cold nights he can sleep in thermals and would like an extra pair of thermals just to make it more even with the women.

**Accommodation:** None.

**Response D:** The female inmate population shows a much higher percentage classified as Level I or Level II based on their case factors (75-80%) compared to the male inmate population. Overall, the female inmate population presents a lower security risk to the Department. The Department has found that for female inmates, appearance is linked to successful recovery and rehabilitation. This is not the case to the same degree for male inmates, who have a different psychological make-up. The Female Offenders Programs opted to increase the quantity and variety of hygiene supplies available for the female offenders as a part of gender-responsive strategies. The Department believes that a female inmate who feels good about how she looks is more amenable to rehabilitation.

**Comment E:** Commenter contends that due to the recent court rulings, for religious reasons, men can wear their hair longer, and there should be no limits on hair care items, except as it pertains to the six-cubic feet limit.

**Accommodation:** None.

**Response E:** Containers of lotions, shampoos, and conditioners are used by male inmates to hide contraband, as these items are not yet all available in clear technology. As a result, this creates a security issue related to the searching of an inmate's quarters.

**Comment F:** Commenter contends that many inmates receive only quarterly packages and do not shop in the canteen. Therefore, it is unreasonable to limit a male to only two shampoos and

two conditioners. He states that the thirty-pound will self-limit and the six-cubic feet will limit as well. Men should have the same amount as women.

**Accommodation:** None.

**Response F:** See Commenter #2, Responses D and E.

**Comment G:** Commenter asks why females are allowed to have two extra light bulbs, and males are not. Why females have two pair of reading glasses (non-prescription), and males only one. Females are allowed three correspondence courses and males only one – shouldn't the correct reading say "Yes?" In addition, why aren't males allowed hair ties and females are – he asks doesn't the Department require hair to be neat?

**Accommodation:** None.

**Response G:** See Commenter #2, Responses D and E. Additionally, light bulbs were not previously addressed as a separate item from lamps, that the possession of light bulbs was implied by the possession of lamps as existing language in Department Operations Manual (DOM) Section 54030.17 indicates. The Female Offenders Programs mission based region chose to address light bulbs separately, whereas within the male mission based regions this is a matter to be addressed in local operational procedure. In regards to hair ties, based upon the revised grooming standards for male inmates, hair ties are permitted and are currently obtainable in vendor catalogs.

**Comment H:** Commenter contends that he has moved from a Level IV to a Level III, but has seen no differences as far as programming and having access to more items. Commenter states that this would be an incentive – give more to the Level III or take more away from the Level IV.

**Accommodation:** None.

**Response H:** This point is in keeping with the Inmate Work Training Incentive Program. Unfortunately, as many facilities are a combination of Level III and IV, it is difficult to permit substantial changes. However, the Division of Adult Institutions will continue to identify additional incentives to apply to reducing security levels.

**Comment I:** Commenter contends that a storage container should be provided to solve cell and transportation problems. Commenter contends that the APPS has left this up to local institutions, and the commenter's institution has chosen not to allow the storage containers. Commenter states he stores his food in brown shopping bags under his bed, and a storage container would prevent mice from getting into his food.

**Accommodation:** None.

**Response I:** Because of varying types of living quarters, it is not practical to require a storage container as a matter of Departmental policy. Many institutions have built in shelves and lockers for this purpose. Departmental policy allows inmates to request this of their local

facility. It is ultimately up to local administrations to assess safety and security issues and make a determination regarding storage containers.

**COMMENTS #3:**

**Comment A:** Commenter contends that it is not right to not rehabilitate the SHU inmates with some form of education and rehabilitation life skills. Commenter asks why the Department would not want to help these inmates and allow them to rehabilitate. Commenter contends that placing an inmate in a cell for twenty-three hours is not helping the inmate or the prison. If the Department would provide more programs, then it would decrease the overcrowding because the inmates would be released with something to help them in life. Commenter contends that the prisons abuse their power, do not listen or try to help, and do not try to understand the inmates in SHU.

**Accommodation:** None.

**Response A:** See Commenter #1, Comment B Accommodation related to education. In addition, see Commenter #1, Response I.

**Comment B:** Commenter contends that a program called “Lockdown” shown in other prisons show SHU inmates reading Shakespeare and doing plays, still in their cells with teachers centered outside and their windows open so that they can be heard. Commenter asks why the CDCR doesn’t do this.

**Accommodation:** None.

**Response B:** See Commenter #3, Response A.

**COMMENTS #4:**

**Comment A:** Commenter contends that these regulations are not in accordance with the rulemaking and codification procedures set forth under the APA. He states that the Public Hearing was scheduled after the “immediate implementation” of the regulation. He states that the Public Hearing being held two months after the implementation is not in accordance with the APA.

**Accommodation:** None.

**Response A:** See Commenter #1, Response A.

**Comment B:** Commenter contends that the Notice refers to the incorporation by reference to the APPS matrix with a revision date of February 1, 2007, yet this proposed revision of the matrix was never posted in the Units/Sections in the Pelican Bay State Prison SHU for the inmate to comment on.

**Accommodation:** None.

**Response B:** The Department contacted the Institution, and was assured that the Notices of Change to Regulations were posted in conspicuous places throughout the institution. The Department reiterates that inmates have access to the Notices; however, the Notices are often torn down, and sheets of the Notices are found to be missing, due to inmate access. The Department attempts to re-post the documents at every possible opportunity.

**Comment C:** Commenter contends that there is no actual necessity by way of emergency for the immediate implementation of these regulations. He contends that it is in contravention of the rulemaking and rule-adopting procedures set forth under the APA.

**Accommodation:** None.

**Response C:** See Commenter #1, Response A.

**Comment D:** Commenter is requesting a detailed explanation of the Notice and that the Notice is rescinded immediately until the proper procedures are administered under the APA. i.e., proper posting of proposed rule changes to all inmates and public, and a public hearing scheduled after the proper posting of Notice with a proper amount of interim time.

**Accommodation:** None.

**Response D:** See Commenter #1, Response A.

**Comment E:** Commenter contends that the APPS states that inmates housed in Pelican Bay State Prison's SHU will be allowed to possess only five books or magazines, zero tennis shoes, fifteen sheets of paper, and zero correspondence courses.

**Accommodation:** See Commenter #1, Comment B Accommodation.

**Response E** See Commenter #1, Comment B Response.

**Comment F:** Commenter contends that there is no actual programming available to indeterminate SHU inmates. The commenter asks why it is necessary to reduce the number of books from ten to five. In bad weather, there is nothing left to do. He states that most indeterminate SHU inmates are there because of administrative policy due to gang validation and that it is not because of disciplinary problems. Also, that they are segregated from the rest of SHU.

**Accommodation:** None.

**Response F:** See Commenter #1, Response D.

**Comment G:** Commenter contends that the Department's reason for reducing the number of books is to facilitate searching is nonsense. He contends that searching ten books is no different than five books. He states that every prison has a fluoroscope to facilitate searching of personal property items.

**Accommodation:** None.



**Response G:** See Commenter #1, Responses C and D.

**Comment H:** Commenter asks what incentive programs for SHU inmates (D-1 through D-4) are being referred to. He contends that limiting SHU inmates to possess only five books and/or magazines is nothing more than punishment for their SHU status and not any infraction of any rules, regulations, or laws.

**Accommodation** None.

**Response H:** See Commenter #1, Response E.

**Comment I:** Commenter contends that “no tennis shoes” is another issue. He contends that the Department lost this exact issue in court litigation, so he asks would the Department rather pay for shoes rather than allow inmates that can purchase their own to do so. He contends that the Department wants to spend more of the taxpayers’ money for something that most inmates are willing to purchase for themselves. He contends that if contraband is the issue, then why that particular inmate would not be issued state-issued shoes.

**Accommodation:** None.

**Response I:** See Commenter #1, Response F. In addition, inmates are permitted to possess their own tennis shoes. This is a privilege extended to inmates assigned to Privilege Groups A, B, and C. Inmates assigned to Privilege Group D lost this privilege through behavior.

**Comment J:** Commenter contends that it will be difficult to correspond with his family members and friends with only fifteen sheets of stationery. He contends that the Department feels that SHU inmates should not be allowed to correspond much, if at all, in exercising their First Amendment rights.

**Accommodation:** None.

**Response J:** See Commenter #1, Response B. Additionally, the restriction to fifteen sheets of stationery is a programming incentive to encourage inmates to improve their behavior and seek placement in a general population environment.

**Comment K:** Commenter contends that eliminating correspondence courses for SHU inmates is not right, and almost all of the courses given by the various prison education departments are correspondence courses. Commenter asks where the rehabilitation part of the Department’s title is.

**Accommodation:** See Commenter #1, Comment B Accommodation.

**Response K:** Correspondence courses can have a positive effect on SHU inmates seeking to better themselves. The Department is permitting correspondence courses for SHU inmates.

## **COMMENTS #5:**

**Comment A:** Commenter contends that he objects to the Department's proposed changes in regards to the amount of canteen any inmate can purchase within the \$180 range. For example, limiting inmates to only two cosmetic purchases at a time from the canteen is irrational because Level III and IV inmates are on constant lockdown and would not have access to cosmetics since they cannot go to the canteen on lockdown. Commenter further contends that Administrative Segregation Unit (ASU) inmates have access to canteen even on lockdown, something the general inmate population does not get. Commenter states that inmates need to stock up on cosmetics to tide them through lengthy lockdowns.

**Accommodation:** None.

**Response A:** It is necessary to limit the purchase of certain items to facilitate searching of cells. Unlimited containers of lotions, conditioners, and other items would negatively impact the safety and security by making cell searches more complicated and time consuming.

**Comment B:** Commenter contends that any security concerns are exaggerated where they claim that the restrictions are to prevent inmate bartering. Commenter asks what is to stop the inmate from bartering what he already has.

**Accommodation:** None.

**Response B:** While bartering exists, efforts will continue to reduce inmates' ability to engage in this behavior. Additionally, bartering is a much smaller problem than the more serious issue of weak inmates being pressured into giving away items of personal property to inmates that are more predatory. Therefore, to discourage an "underground economy" within CDCR institutions and minimize disruptive and predatory behavior between inmates, personal property must be regulated by the Department.

**Comment C:** Commenter contends that enacting this policy would be in violation of Section 3060 and 3061 because it would prevent inmates from obtaining sufficient cosmetics to meet their needs and maintain their personal hygiene. Commenter contends that two lotions and two deodorants will not last anyone an entire month if they shower daily.

**Accommodation:** None.

**Response C:** Title 15 Section 3060 requires the Department to provide the means for inmates to keep their living quarters clean and to practice good health habits. Section 3061 places the responsibility on the inmate to use the means the Department provides. This is a requirement of all inmates, regardless of Privilege Group or whether they have funds or are indigent. Section 3060 establishes the Department's requirement to provide minimum Constitutional standards for cleanliness and hygiene. The Department has always met this basic requirement from the first day an inmate is placed in custody, by providing the basic necessities for health and hygiene. These necessities include soap, toilet paper, toothbrush, toothpowder or toothpaste, access to showers, towels, mattress, clean linens and a blanket. Cleaning supplies such as brooms, mops, rags and cleaning compounds are also available in housing units. All of

these items are provided to inmates at no cost. Cosmetics, lotions and deodorants are not required for health or hygiene.

**Comment D:** Commenter contends that there is a more practical reason for removing all restrictions on inmate canteen purchases. Commenter states that Title 15 Section 3090(b) sets the maximum range that an inmate may spend, depending on his custody level at \$180. Commenter states that once the State has enacted a rule, regulation, or statute that confers a privilege on any inmate, it cannot place restrictions on that privilege. Commenter states that under the current state law, the Department may not dictate how an inmate spends his money in the canteen as long as the inmate is within six cubic feet and the range set forth in Section 3090(b) and related regulations.

**Accommodation:** None.

**Response D:** The Department disagrees. Unless the Legislature has adopted specific statutory provisions, the Secretary of the CDCR has been granted broad authority to set the rules regarding inmates and their incarceration (Penal Code Sections 5054, 5055, and 5058). Individual item restrictions on personal property are reasonable and necessary in order to facilitate searching of inmate living areas. These limitations are also necessary to reduce inmates from stockpiling merchandise and creating de facto “stores” from which they then conduct illicit business.

#### **COMMENTER #6:**

**Comment A:** Commenter contends that last year Avenal State Prison (ASP) inmates were ordered to relinquish all appliances that used Alternating Current (AC) because the AC access was going to be cut off. Commenter states that it was only through the 602-appeal process that this was stopped. Commenter states that no access to AC outlets was based on excess use in two other buildings not having access to AC outlets. The prison asked for an Exemption that was granted not allowing inmates to purchase AC operated fans or lights, because AC access was going to be closed.

**Accommodation:** None.

**Response A:** The submission and response to any inmate appeal at this level is a local facility matter. No Exemption request to permit AC operated fans or lights was received by the Division of Adult Institutions. Commenter should inquire with his Inmate Advisory Counsel Representative.

**Comment B:** Commenter contends that the regulation change does not reflect the Exemption at ASP. Commenter states that there were lawsuits filed on behalf of inmates to have access to AC outlets that were granted. Commenter asks, how could another Exemption be granted when they have the access to use AC outlets?

**Accommodation:** None.

**Response B:** Exemptions granted for ASP restrict AC appliances from all dormitory housing and increase the limit of allowable batteries from eight to sixteen. This regulation change does not impact this previously granted Exemption.

**Comment C:** Commenter contends that it is necessary to have personal fans and lights because four out of six housing units at ASP do not have air conditioning, and are housing over one-hundred inmates with varied work hours. Commenter contends that the administration is fully aware of the problem.

**Accommodation:** None.

**Response C:** Inmates in dormitory housing may possess battery operated fans and lights, as is their choice.

**Comment D:** Commenter contends that AC is cleaner and cheaper than batteries and that the right to purchase fans and lights that use AC is in the best interest for inmates, staff, and the environment. He requests removal of the Exemptions from ASP to allow personal lights and fans.

**Accommodation:** None.

**Response D:** The previously granted Exemption was based upon limitations of the current physical plant and safety concerns resulting from extension cords creating hazards in an open dormitory environment. The option of upgrading the physical plant to permit individual AC outlets for each inmate is cost prohibitive at this time.

#### **COMMENTER #7:**

**Comment A:** Commenter requests that the number of allowable books for inmates housed in SHU not be reduced from ten to five.

**Accommodation:** None.

**Response A:** See Commenter #1, Responses C and D.

**Comment B:** Commenter contends that books are rehabilitative. Commenter states that ten books are no risk to safety and security and that the books are purchased from accredited vendors and screened prior to distribution.

**Accommodation:** None.

**Response B:** This restriction does not apply to library books, which any inmate may check out from the library, nor does it limit legal books or legal reference material.

**Comment C:** Commenter contends that reducing the books minimizes the Department's rehabilitative goal. Commenter also contends that the proposed reduction in books amounts to

discriminating between SHU and non-SHU inmates in regards to rehabilitative opportunities. Commenter contends that this is a violation of equal protection absent due process.

**Accommodation:** None.

**Response C:** See Commenter #1, Responses C, D and E.

**COMMENTS #8:**

**Comment A:** Commenter contends that the proposed changes are aimed at further restricting inmate mobility, privileges, and personal property possession. Commenter contends that the Department places a low value on inmates and desires to squash their humanity.

**Accommodation:** None.

**Response A:** See Commenter #1, Response E.

**Comment B:** Commenter contends that the recidivism rates will increase due to the lack of jobs because of the Department not meeting the requirements for higher education. Commenter contends that education civilizes people, and asks why the reduction from ten to five books? Commenter states that unruly inmates should be provided more, not less books, and this ruling will bring further resentment and anger.

**Accommodation:** None.

**Response B:** See Commenter #1, Responses C and D.

**Comment C:** Commenter asks why the Department does not consider the removal of newly deemed unapproved appliances by attrition as it does with memory typewriters, umbrellas, and keyboard instruments.

**Accommodation:** None.

**Response C:** Keyboards and memory typewriters are to be removed through attrition. Umbrellas are not permitted as they represent weapon stock. It is unknown what newly deemed unapproved appliances commenter is referring to.

**Comment D:** Commenter contends that it will be difficult for a disabled inmate to replace appliances now deemed a security issue without family to help. He contends that the Department receives a vendor dollar amount kickback with every item sold to its incarcerated. He contends that this is motive for the changing of the regulations.

**Accommodation:** None.

**Response D:** Friends and family members may purchase inmate packages and thereby provide appliances to inmates. There is no financial relationship between the Department and any

inmate package vendor. All previously approved appliances continue to be “grandfathered in” and remain allowable until no longer operational.

**Comment E:** Commenter contends that males feel less important than females and therefore, this is discrimination. Commenter contends that the male propensity for violence is an erroneous position of the Department. Commenter states that there is little violence at Mule Creek State Prison III (*note: commenter does not define what III means*) and few or no weapons are found, and mutual combat, though infrequent, is the extent of the violence. Commenter asks why males cannot possess the same property permitted to the females.

**Accommodation:** None.

**Response E:** See Commenter #2, Response D.

**COMMENTS #9:**

**Comment A:** Commenter contends that the regulations states that it reduces the ability for inmates to barter or trade, however, the Department is giving them additional electrical items for that reason, and only the well-off inmate can afford the additional appliance.

**Accommodation:** None.

**Response A:** Electrical appliances were increased from two to three. There is no requirement for any inmate to possess any appliance.

**Comment B:** Commenter contends that the regulations state that it reduces inmate’s personal property claims. Commenter states that the more appliances you give the more claims you are going to have on broken or lost property.

**Accommodation:** None.

**Response B:** The reduction in personal property claims result from the standardization of allowable property. The majority of claims and property appeals are submitted as the result of institutions not permitting the same property.

**Comment C:** Commenter contends that the regulations are a joke and asks who the Department is kidding with the statement that it reduces the ability of inmates to intimidate other inmates. Commenter states that they now have more reason, because of these regulations.

**Accommodation:** None.

**Response C:** Greater standardization places all inmates in similar situations on a more equitable status with regard to their personal property.

**Comment D:** Commenter contends that at Wasco State Prison there are only four outlets so now these regulations are giving the inmates a multi-plug extension cord so they can plug all six appliances in. Commenter states that now inmates can waste even more electricity, and asks

who is saving the state money now. Commenter asserts that the State of California is having trouble keeping up with demand, and the more the Department gives inmates the more they do not mind coming back to prison. Commenter states that it is sad when he sees an inmate cry to leave because of all the things he had in prison, and that this is the reason for the overcrowding.

**Accommodation:** None.

**Response D:** Department contends that the possession of extension cords, while permissible, is entirely the decision of each local facility administration. Policy recognizes a need for extension cords in many housing situations. It is up to each facility administration to address its own need in this area.

**COMMENTS #10:**

**Comment A:** Commenter asks if he has over the allotted amount of personal items such as soap, deodorant, toothpaste, lotions, shampoo, will he have to send them home or donate them. Commenter contends that inmates go to the canteen every month and can purchase the items, and that inmates will have more than the allotted amount. Commenter is requesting a clearer definition on this matter.

**Accommodation:** None.

**Response A:** It is the inmate's responsibility to retain a canteen receipt to show the reason for the overage. Exceeding the limit temporarily is permitted for food and hygiene items.

**Comment B:** Commenter contends that 3191(c) discriminates against indigent inmates, by not letting them send their contraband home to a loved one. Commenter also contends that there is confusion regarding cosmetics and that if they fit on yourself, you should be able to keep it even if it is more than the allowable amount. Commenter states that the Department does not supply deodorant or lotion to indigent inmates. Commenter states because he is indigent he has to stock up when he receives his quarterly packages because he cannot go to the canteen.

**Accommodation:** None.

**Response B:** It would be unduly burdensome on the Department and an increased public expense to pay for indigent inmates to send contraband items home. All inmates were permitted one year to dispose of items that were no longer allowable under these regulations. In addition, the Department provides all necessary hygiene items free to indigent inmates. This includes soap, toothbrush, toothpowder, and toilet paper.

**COMMENTS #11:**

**Comment A:** Commenter contends that the Notice for these regulations were not made available for inmates to review and that he got a copy from an inmate outside of the facility. Commenter contends that he was told that this regulation did not apply to him and therefore it was not posted.

**Accommodation:** None.

**Response A:** A Certification of Posting was received from High Desert State Prison, and the institution is in full compliance with the posting requirements, which included SHU and ASU. Quite often at the institutions, after Departmental staff has posted the required Notice for all inmates to review in the individual facilities, libraries, etc., inmates tear down and utilize the paper from the Notices for something other than its intended purpose. The Commenter can write to the Department and request to be placed on the Department's mailing list for proposed regulations.

**Comment B:** Commenter contends that if this regulation was in effect over a month ago, then why does the institution continue to hand out only the minimum and not all that the inmates are allowed according to the APPS? Commenter contends that he has tried to file a 602 regarding this issue, but that it continues to disappear and he never sees it again. Commenter asks isn't the Department supposed to give them their personal property including TV and radios and other personal property? He asks why this is being ignored at this institution. Commenter contends that High Desert State Prison continues to "get away" with whatever they want because there are so many wrongs going on there.

**Accommodation:** None.

**Response B:** The APPS addresses personal property that inmates are permitted to have not what property they are entitled to. With the exception of basic property supplied by the Department, for example clothing and linens, inmates are responsible for what personal property they choose to have in their possession within the Department's rules. Inmates may appeal any decision that they believe adversely affects them. It is recommended that an Inmate Appeal Form 602, be submitted to your local appeals coordinator for logging and processing.

**Comment C:** Commenter requests a copy of the newest Title 15. He states that the staff refuses to give them to the inmates for some reason and the only way to get one is through legal mail.

**Accommodation:** None.

**Response C:** Title 15, Section 3002, mandates that every inmate receive a copy of the rules and regulations of the Department. The books are shipped directly to each institution and then delivered to each inmate. The inmate signs a Document Receipt CDC 128-O that is then placed in the inmate's central file. Inmates may purchase replacement copies, if they are available.

#### **COMMENTERS #12 through #49:**

**Comment A:** Commenters contend that ASP desires to exempt itself from Departmental policies, specifically concerning appliances allowed for Level II inmates. They state that ASP's "local" policy does not allow any appliances that plug into an electrical outlet.

**Accommodation:** None.



**Response A:** ASP was granted an Exemption for AC appliances in all dormitory housing. This was granted in recognition of physical plant limitations as well as safety and security concerns.

**Comment B:** Commenters contend that the use of personal appliances by inmates is one of the calming factors in over-crowded, under-ventilated, cramped dorms and gyms, and that restricting the use of electrical outlets is like adding fire to a haystack.

**Accommodation:** None.

**Response B:** ASP continues to permit battery-operated appliances in dormitories, and has increased the allowable limit for batteries from eight to sixteen. While the Department would prefer to permit dormitory inmates to possess personal appliances, physical plant limitations make this impractical and unsafe until funds for infrastructure improvements are available.

**Comment C:** Commenters contend that by the name of the office, Regulation and Policy Management Branch (RPMB), they assume that RPMB is the policy maker, not the local “acting” wardens or R&R (*note: R&R is not defined in letter*) staff. Commenters ask why ASP is allowed to enact new policies, and then ask permission eighteen months later, and if this is standard, what is the purpose of RPMB?

**Accommodation:** None.

**Response C:** The last revision to inmate property regulations were approved by the OAL as an Emergency Operational Necessity, and filed with the Secretary of State on May 27, 2004, and went into permanent effect on December 14, 2004. The purpose of this proposed regulation revision is to incorporate the details found in the APPS. ASP and all institutions have the ability to adopt local rules that are within existing Department policy. We are unable to provide further response to this comment as it is vague and ambiguous.

**Comment D:** Commenters contend that the reason for this “local” policy, not authorized by your office, is to control energy costs. A cost-saving step would be to sell AC adapters, hot pots, personal fans, reading lamps, and power strip/surge protectors in facility canteens as at other Level II prisons. The cost to operate these personal appliances, along with LCD Televisions and radios, is far less expensive than legal battery disposal.

**Accommodation:** None.

**Response D:** Energy costs are controlled by the limitation on appliances, the number of outlets available, and the electrical load capacity of the physical plant. AC adapters, while permitted along with hot pots, fans, etc., do not result in an energy cost savings. The Department also notes that inmates at ASP may want to consider conventional cathode-ray tube (CRT) televisions if they are concerned about energy usage and the cost of batteries. CRT televisions typically use less energy than the equivalent sized plasma, digital light projection (DLP), or the liquid crystal display (LCD) televisions mentioned by commenters.

**Comment E:** Commenters contend that legal battery disposal is costly and an expense that every entity, public and private, is obligated to do. Commenters contend that if ASP is disposing of

batteries legally, it must be more expensive than the cost of the electricity used by inmates, and if ASP is disposing of them illegally, then they are violating Federal regulations and subject to fines and possible over-sight by the EPA.

**Accommodation:** None.

**Response E:** AC appliances are restricted as a matter of safety, not cost. Battery recycling is a standard part of the Department's Recycling and Salvage Program. In many dormitory situations, the only alternative would be to disallow any type of electric appliance.

**COMMENTS #50:**

**Comment A:** Commenter contends that the Notices are not being posted and made accessible to inmates in SHU. Commenter contends that he filed a CDC 602 Appeal regarding the failure to post and make accessible the Notice. Commenter states he was told that the Notice was posted in the Law Library and that it was available for his review, but when he went to the Law Library the Notice was not available. Commenter further contends that the due date on his appeal is almost ten days after the close of the comment period.

**Accommodation:** None.

**Response A:** See Commenter #4, Response B.

**Comment B:** Commenter contends that the reduction of allowed books/magazines and newspapers is being reduced from ten to five. Commenter contends that while the Department is pushing for rehabilitation, it is reducing the amount of books in SHU, which is more of a punishment than a security interest.

**Accommodation:** None.

**Response B:** See Commenter #1, Responses C, D and E.

**Comment C:** Commenter contends that he has a parole date of May 2, 2008, and has been housed in SHU for seventeen years with no vocational/job training, and that books have been his only means of education/rehabilitation.

**Accommodation:** None.

**Response C:** See Commenter #1, Responses C and D.

**Comment D:** Commenter contends that the regulation limits the amount of stationery for SHU inmates to fifteen sheets, and this places limits on inmate correspondence that goes against the Department's policy regarding maintaining contact with friends and family.

**Accommodation:** None.

**Response D:** See Commenter #1, Response B.

**Comment E:** Commenter contends that if the Department is going to limit the books from ten to five, then they should be responsible for the cost to send the books home.

**Accommodation:** None.

**Response E:** Prior to implementation of the standardized property policy, each institution established its own property list and limits. The standardized policy and current limit of five books went into effect in December of 2004. Inmates were given a one-year grace period to dispose of excess property. This grace period ended in 2005. The Department will still permit inmates to decide on the method of disposal, which may include mailing items out at their expense.

**COMMENTERS #51 and #52:**

**Comment A:** Commenters contend that this regulation does not allow standardized personal property standards per APPS, instead quite the opposite, and is clearly designed to better manage the inmate population.

**Accommodation:** None.

**Response A:** Departmental policy creates standardization.

**Comment B:** Commenters contend that the Departmental design of more privileges as the custody level drops is false. Inmates' concerns were not considered when the use of "Exemption Request" by local institutions was utilized. Commenters state that attached to this comment is the Warden's request for Exemption. (*Note: Warden's request for Exemption was not attached to letter*). Commenters further state that ASP Levels I and II has not mentioned the use of the "Exemption Request" in any Inmate Men's Advisory Counsel (IMAC) minutes or local memos. Commenters further state that the APPS are a perfect opportunity for the Department to fix a lot of problems, a solution for both management and inmates.

**Accommodation:** None.

**Response B:** The APPS is clearly designed around Privilege Groups as an incentive for positive programming. Additional property allowances have been granted for Level I and Level II inmates as opposed to Level III and Level IV inmates.

**Comment C:** Commenters contend that the APPS matrix at ASP is contrary to the Departmental mission, and that the disparity regarding AC appliances is unreasonable. The Exemption request from ASP is not appropriate by Departmental standards and regulations. Commenters contend that for fourteen years ASP has allowed personal TV's, and that the current acting Warden is clearly retaliating on the inmate population with the Exemption request.

**Accommodation:** None.

**Response C:** The Exemption request restricting AC appliances from dormitory housing addresses limitations on physical plant construction and safety issues.

**Comment D:** Commenters contend that AC appliances have been restricted at ASP and are not allowed in quarterly packages, such as, but not limited to AC-powered fans, hot pots, AC-powered lamps, extension cords, battery charges, re-chargeable batteries, AC-powered TV's etc. Commenters contend that Exemptions removed approximately ninety percent of the earned privileges by group/level status.

**Accommodation:** None.

**Response D:** The Department recognizes the disadvantages of dormitory living and encourages suggestions for any additional programming incentives that may work safely in dormitory housing.

**Comment E:** Commenters state there is a problem with the APPS standardization. Commenters contend that this is how model inmates are treated for good behavior and positive programming, stressful, over-crowded conditions, and dorm living is not a privilege. Commenters also state that ASP has not provided any valid rational or supporting data such as incident reports or physical plant limitations.

**Accommodation:** None.

**Response E:** See Commenters #51 and #52 Responses C and D.

**Comment F:** Commenters contend that there has never been a UL listed electrical appliance that has caught fire or has caused any Brown Outs or Black Outs. Commenters contend that staff and inmates "trip" breakers by staff use of microwaves or inmates who have resorted to the use of home made immersion heaters to make hot water for canteen and quarterly package items.

**Accommodation:** None.

**Response F:** While uncommon because of safety precautions, cell fires have occurred and may result in a loss of life.

**Comment G:** Commenters contend that on the face of the APPS at ASP, the message is to only reward privileges if an inmate misbehaves and ups the custody level. Commenters list several appliances, their power usages and cost to the inmates, and the reasoning for usage. This list includes fans because of poor ventilation in the housing units; hot pots or immersion heaters, 350 watts, because canteen and quarterly package items require hot water; lamp, AC or battery powered, because over-head dorm light have been the documented cause of many fight/riots and assaults with weapons, and not all inmates need a light at 3:00 a.m. to read or write; electric typewriter is much quieter than manuals and a better option for dorm living; extension cords ease problems regarding safer access to power outlets; battery charger limits the costly use; re-chargeable batteries due to a shortage of batteries and it saves land fills; TV sets ease over-crowded conditions and are harmless. The commenters contend that thousands of lifers and long-term inmates have little choice but to litigate for their privileges.

**Accommodation:** None.

**Response G:** See Commenter #1, Response I.

**COMMENTER #53: (Including 2 additional signatures)**

**Comment A:** Commenters contend that they are not objecting to Sections 3190 and 3191 even though many of the sections are nonsensical and violate the Penal Code. Their objection is that this is incorporating by reference an underground regulation that was never lawfully promulgated in accordance with the Penal and Government Codes. Commenters contend that the APPS are a compilation of hundreds of statewide rules and regulations as well as regional exceptions that have never been properly noticed, nor explained and adopted.

**Accommodation:** None.

**Response A:** Department disagrees with the comments. This action implements a determination from the OAL issued on February 20, 2007, that the Department must promulgate its inmate property matrix in accordance with the APA. The Department followed all statutes and rules specific to the promulgation of regulations. Furthermore, the OAL reviewed and approved the regulations and the APPS for emergency adoption as a legitimate rulemaking file. Title 1, Section 20 is specific to “Incorporation by Reference,” and the Department fully complied with all aspects of this rule. OAL then proceeded to file the Emergency Operational Necessity regulations with the Secretary of State. The Department fully complied with all applicable laws and guidelines and the emergency regulations were filed with the Secretary of State and are now in temporary effect. Furthermore, the Department noticed all interested parties with the publication of the Notice on August 24, 2007, (GC 11344.1) and with the mailing and emailing of the Notice of Change to Regulations to all interested parties. Each institution was instructed to post the Notice of these regulation changes so that they were available to inmates (Notice of Change to Department Rules 07-11). Notices were also posted on the Department’s public website for regulations. Additionally, the Initial Statement of Reasons provides an explanation of the reasoning of the regulations including the necessity of the regulations. The Department also contends that OAL accepted the Certification of Operational Necessity and approved these regulations to be a viable Emergency Operational Necessity pursuant to PC 5058.3.

**Comment B:** Commenters contend that the proposed regulation is not an emergency, and that filing it as such is an abuse of power by the Department. Commenters contend there has never been a valid statewide emergency with respect to property. Commenters point to a 2007 OAL Determination ruling that the property APPS are an underground regulation. Commenters state that the Department provided no facts in the APPS, only motivation for it.

**Accommodation:** None.

**Response B:** See Commenter #1, Response A.

**Comment C:** Commenters contend that many of the objections contained in the APPS are arbitrary and contradicts other Title 15 sections. Commenters give examples, such as maximum size limits on address books that restrict correspondence with family and friends, which is

encouraged by the Department. Disallowance of bulk powdered products such as protein supplements is an attack on inmates' physical integrity, and that pill supplements are too expensive. Disallowance of electric alarm clocks prevents getting up on time and being productive. Commenters contend that use electric typewriters should be encouraged for prisoners to spend time in a positive manner. Comments state that the Department says the reasons for the reduction of inmate property alludes to fire hazards, and that this reason is an exaggeration. Commenters state that if the Department believed fire hazards to be a threat, they would encourage electronic storage of paper documents, and the use of electronic devices prepares prisoners for the job market upon release. Commenters state the three-appliance rule is arbitrary, and inmates should be permitted to possess as many approved appliances as they can afford within their six-cubic foot allowance. Fans and hot pots should be exempt items, given freely to the discretion of the local wardens due to institutional need. Desert institutions need to have fans for each inmate in their cells as temperatures exceed 120 degrees at times.

**Accommodation:** None.

**Response C:** See Commenter #1, Response A. Additional address books may be permitted through the exemption process. Until this occurs, commenters may use other methods of capturing addresses such as lined writing paper. Protein supplements are not necessary due to the Department's heart healthy diet; still, they are permitted as a courtesy. Unlock lists are developed for staff to wake up inmate workers. Alarm clocks are not necessary and represent security concerns. Electronic storage media is not permitted for inmates as they are used to support illicit activity such as gambling debts and the prison drug trade. Allowable appliances were recently increased from two to three; however, institutional power limitations continue to be a restricting factor. Fans are permitted for all programming inmates and hot pots are permissible by the local Warden's discretion.

#### **COMMENTER #54:**

**Comment A:** Commenter contends that proposed regulations endorse gender discrimination and blatantly display favoritism toward the female inmate population. Commenter states females are allowed more of gender-neutral items than males. Commenter asks why females should be allowed to purchase denim jeans when males are not. Commenter states that proposed regulations are contrary to Title 15, Section 3044, which states that no inmate shall be granted privileges not made available to other inmates. Commenter states females have unrestricted limits on hygiene products, whereas males are greatly restricted. Commenter states that the APPS should be rewritten to reflect equality for gender-neutral products where inmates are similarly situated, and that security concerns do not warrant gender discrimination.

**Accommodation:** None.

**Response A:** The Department does not believe that Title 15, Section 3044 has been violated. The CDCR has been working aggressively in the area of female offender reform and rehabilitation, identifying those areas that have been shown to positively affect the outcomes for female offenders, reduce the recidivism rates, and increase their successful reintegration into society.

In October 2007, California enacted Penal Code Section 3430, which, in part, requires the Department to “*Create policies and operation practices that are designed to ensure a safe and productive institutional environment for female offenders.*” Female offenders who are programming effectively increase the safety and security of the prisons and become productive workers within the institutional workforce, thereby increasing their self-esteem, rehabilitative outcomes and improving the female offender’s chances of a successful re-entry. The Department has tailored its Authorized Personal Property Schedule for female offenders to promote a positive environment suited to them and to reduce the possibility of recidivism when they are eventually paroled into the community.

Females come into the criminal justice system via different pathways; respond to supervision and custody differently; exhibit differences in terms of substance abuse, trauma, mental illness, parenting responsibilities; and employment histories; and represent different levels of risk within both the institution and the community. To successfully develop and deliver services, supervision and treatment for female offenders, we must first acknowledge these gender differences. A safe, consistent, and supportive environment is the cornerstone of a corrective process. Because of their lower levels of violent crime and their low risk to public safety, female offenders should, whenever possible, be supervised and provided services with the minimal restrictions required to meet public safety interests.

Turner v. Safley 482 U.S. 78, 89 (1987) established that “when a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.” The Department’s prescribed property allotment for female offenders furthers the legitimate penological interests to create a gender-responsive programming that will better serve the needs of the female inmate population.

Differences in women’s pathways to criminal justice system, women’s behavior while under supervision or in custody and the realities of women’s lives in the community have significant bearing on the practices of the criminal justice system. There is significant evidence that the responses of women to community supervision, incarceration, treatment and rehabilitation differ from those of men.

**Comment B:** Commenter contends that the APPS Exemption policy continues to make inmate property confusing. Commenter states that same-level inmates should have the same privileges across the various institutions. Restricting hygiene products for the male inmate population is in violation of the Title 15. Commenter suggests that the regulations and APPS be rewritten to consistently hold individual inmates accountable for their abuse of property rather than punishing all inmates by restricting property.

**Accommodation:** None.

**Response B:** The Exemption process is necessary to allow local facilities the ability to address differences in physical plant, facility location (weather, heat, cold, etc.), and local security needs. Hygiene products are not restricted although some containers, such as hair conditioner, are more limited for male inmates who have displayed a greater propensity for hiding contraband.

**COMMENTER #55:**

**Comment A:** Commenter states that preventing visitors from exiting Ironwood Prison with bottled water and food items is a violation of the Fifth Amendment and is undesirable to visitors, especially in high temperatures, and will discourage future visits.

**Accommodation:** None.

**Response A:** See Commenter #1, Response I.

**Comment B:** Commenter contends that proposed DOM Sections 54020.29 and 54020.24 are underground regulations and in conflict with the Title 15. Commenter contends that these DOM sections are void and unenforceable, but that wardens often follow the DOM and not the Title 15 when they are in conflict. Commenter states he has been attempting to resolve this issue for years. See Commenter #1, Response I.

**Accommodation:** None.

**Response B:** DOM policy regarding visiting is not part of this proposed rulemaking. See Commenter #1, Response I.

**COMMENTER #56:**

**Comment A:** Commenter contends that proposed regulations are in violation of the Equal Protection Clause of the United States Constitution. Commenter contends that male and female inmates should have the same number of pens. Commenter states that allowing women to possess more battery operated appliances and ketchup is a violation of the Equal Protection Rights.

**Accommodation:** None.

**Response A:** The Department does not believe that an Equal Protection Clause violation exists based on the following:

The Equal Protection Clause generally requires the government to treat similarly situated people alike. However, because of real differences between male and female inmates, courts tend not to view these inmate populations as being similarly situated for the purposes of the services or privileges that they receive in prison. “Female inmates as a class have special characteristics distinguishing them from male inmates, ranging from the fact that they are more likely to be single parents with primary responsibility for child rearing to the fact that they are more likely to be sexual or physical abuse victims. Male inmates, in contrast, are more likely to be violent and predatory than female inmates.” *Klinger v. Department of Corrections*, 31 F.3d 727, 731-32 (8th Cir. 1994). Prison systems may accordingly assign different personal property requirements to account for these gender differences. An Equal Protection violation will be found to occur only when there is intentional or purposeful discrimination by the state. *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 274 (1979).



The issue of increased property for female offenders is not the act of intentional discrimination. To successfully develop and deliver services, supervision and treatment for female offenders, prison systems must first acknowledge the gender differences between men and women inmates. A safe, consistent, and supportive environment is the cornerstone of a corrective process. Because of their lower levels of violent crime and their low risk to public safety, female offenders should, whenever possible, be supervised and provided services with the minimal restrictions required to meet public safety interests. It is lawful for these reasons for the Department to permit increased personal property for female inmates.

The law in fact encourages innovation with regard to prison programs for female inmates. The Legislature recently enacted Penal Code Section 3430(b), mandating the Department to create policies and operational practices that are designed to ensure a safe and productive institutional environment for female offenders. The Department has tailored its Authorized Personal Property Schedule for female offenders to promote a positive environment suited to them and to reduce the possibility of recidivism when they are eventually paroled into the community.

**Comment B:** Commenter contend that the Department is intentionally restricting male inmates' right to the courts by limiting their pens, as women are far less likely to seek judicial review. Commenter states that he should be allowed more than four pens per quarter, as he will require more ink.

**Accommodation:** None.

**Response B:** The limit to four pens or any other item of personal property is not based upon a time period such as a month or calendar quarter. This is a point in time limit. In addition, the inmates, through the local Inmate Advisory Committee, have the ability to increase limits if it is acceptable to local facility administration. A request of this type has never been received.

**Comment C:** Commenter contends that Facility B-SUSP at Salinas Valley State Prison has been improperly classified on the APPS as a high-security and transitional housing yard. Commenter states that this facility is instead a sensitive-needs yard and its inhabitants are well behaved, and should be classified with the others on Pages 2 and 3 of the proposed regulations.

**Accommodation:** None.

**Response C:** It is common for facilities within each institution to serve multiple missions and house multiple security levels. As a standard practice, the institution is subject to the security level constraints imposed by the Mission Based Region. As the physical plant may permit, in keeping with safety and security concerns, an individual facility may receive property commensurate with a different security level. This is most common in the Minimum Support Facilities which are separate from the institution perimeter. The local facility administration needs to approve this variance.

#### **COMMENTS #57:**

**Comment A:** Commenter states that recently built ASU housing units do not possess the cable or AC hookups necessary to allow for use of televisions, despite the fact that the property matrix

specifies that inmates in ASU may have televisions. Commenter states that he was told by the prison that the Governor would not allocate funds to make the ASU's accommodating for televisions.

**Accommodation:** None.

**Response A:** Some ASU housing does not easily accommodate televisions. The Commenter is reminded that the possession of property is a privilege, not a right. However, the Department also recognizes the positive effects of a personal entertainment appliance such as a television, and continues to look at options to permit this.

**COMMENTS #58:**

**Comment A:** Commenter states that he is an honorably discharged Vietnam Navy Veteran and survivor of the Cuban Missile Crisis, Russian Cold War, and Vietnam War. Commenter was a third rank officer in the Intelligence Division and held a highly qualified technical job. Commenter states that he fought for the United States and would deeply appreciate all Veterans, the sick, the handicapped, and the terminally ill elderly being given electrical outlets and much needed appliances.

**Accommodation:** None.

**Response A:** Physical plant limitations continue to restrict our ability to provide this to inmates.

**COMMENTS #59:**

**Comment A:** Commenter questions if he is allowed to have "Cup-o-Noodles" type containers since they are in Styrofoam cups. Will he have to discard his non see-through typewriter and television if they break down? Why are non-electric musical instruments considered an appliance at high level institutions, but not low level and female institutions? Commenter states that it is unfair to offer preferential treatment to female inmates and lower level facilities, and states that these regulations have no bearing on security or space.

**Accommodation:** None.

**Response A:** Styrofoam containers may or may not be permitted based upon the type of housing and security level. Non-see through typewriters and televisions are allowed to be retained until no longer operational. When replaced they must be replaced with clear case appliances. A musical instrument of any type takes the place of one appliance. In addition, see Commenter #1, Response E and Commenter #2, Response D.

**COMMENTS #60:**

**Comment A:** Commenter states that he is an inmate at Folsom State Prison (FSP) and was told by staff that FSP was exempt from new property regulations, but refuses to show proof. Commenter states that he already has a 602 Appeal out on the subject, but would like to know from CDCR headquarters if FSP is in fact exempt from new property regulations.

**Accommodation:** None.

**Response A:** All institutions are subject to these property regulations. Exemptions are granted only when there is a unique situation at an institution that does not exist elsewhere in the Department that justifies an exemption. No Exemption request has been received from FSP.

**COMMENTS #61:**

**Comment A:** Commenter states that he is disabled inmate falling under the Americans with Disabilities Act (ADA) *Armstrong v. Davis* Remedial Plan at ASP. Commenter states that ASP is discriminating against ADA inmates and violating Title 15, Section 3044 by being the only Level II institution that does not allow electrical appliances for its privileged A or B Groups.

**Accommodation:** None.

**Response A:** The restriction on electrical appliances is not related to disability. The restriction is based upon safety and security issues inherent in dormitory housing and the infrastructure limits and inmate population at ASP.

**Comment B:** Commenter states that proposed regulations also discriminate against indigent inmates by forcing them to purchase highly expensive batteries. Commenter states that heat-sensitive inmates on psychotropic medications are also facing discrimination. Commenter states that if the Exemption for ASP were lifted, there would not be any new wiring or unusual expense.

**Accommodation:** None.

**Response B:** State televisions in shared areas are provided for all inmates' viewing at no cost. Large fans are used in the summer months to keep temperatures down and air circulating.

**COMMENTS #62:**

**Comment A:** Commenter asks the reason for treating Level I and II inmates at ASP differently from all other inmates at same level institutions. Commenter asks why Avenal Prison's warden is allowed to enact policy and then ask for permission eighteen months later. Commenter refers to restricted electrical outlets and appliances, a lack of hot water in showers, and insufficient air conditioning as a few of the negative living conditions at ASP, and that the use of electrical appliances in these situations is a calming factor at the prison.

**Accommodation:** None.

**Response A:** All inmates are subject to restrictions relative to physical plant limitations. The only restriction applied to inmates at ASP is the restriction from AC appliances. This is a very common restriction in dormitory settings. Local facility administration may immediately act on any Exemption request if it is based on safety or security needs.

**Comment B:** Commenter suggests that Avenal sell AC adapters, hot pots, personal fans, lamps, and power strips in the canteen as other Level II institutions do, and that this would be far cheaper than batteries which are also costly to dispose of. Commenter states that if ASP is disposing of batteries illegally, they are violating Title 15, Sections 3190 and 3191 and are subject to fines.

**Accommodation:** None.

**Response B:** See Commenters #12-49, Response E.

**COMMENTER #63:**

**Comment A:** Commenter states that the Notice of Change to Regulation concerning Property posted at Corcoran State Prison does not go into any kind of detail to assist him in understanding the changes. Commenter requests clarification.

**Accommodation:** None.

**Response A:** The Department agrees that the Notice of Change to Regulations itself does not provide sufficient detail. Commenter is referred to the Text of Proposed Regulations, the APPS, and the Initial Statement of Reasons for more information. These were provided as an attachment to the Notice.

**COMMENTER #64:**

**Comment A:** Commenter states that new property regulations do not include Levis jeans for male inmates, but do for females. Commenter states that Levis have been a personal property item for decades, and have never been a security risk. Commenter states that thousands of male inmates possess three pairs of \$40 Levis, and asks if they will be able to continue wearing them. Commenter suggests the regulations be reconsidered, and that male inmates be allowed to buy and possess Levis jeans.

**Accommodation:** None.

**Response A:** Inmates are not permitted to wear or possess personal clothing that would allow them to blend in with the general public. This is a safety and security concern directly related to escapes. The Female Offender Programs and Services Mission has determined that female inmates do not represent a high escape risk and have therefore permitted personal denim to address self-esteem issues.

**COMMENTER #65:**

**Comment A:** Commenter states that the CCPOA are little more than uniformed thugs that are unable to operate within the structure of the Code of Conduct. Commenter states he and his family are angry with correctional officers who continue to take products out of vender packages after deciding for themselves what is and is not needed by the inmate. Commenter states the behavior of the correctional officers is out of Legislature's control, and will continue to build stress levels and decrease personal comfort further within the overcrowded prisons.

Commenter states that the CCPOA is destroying the intent of AB 1662, which is more proof that they have more power than the Legislature.

**Accommodation:** None.

**Response A:** See Commenter #1, Response I.

**Comment B:** Commenter asks how a battery operated item can be considered appliance when inmates are only allowed two appliances each. Commenter asks how an acoustic guitar can possibly be categorized as an appliance when skill and not electricity is necessary to operate it.

**Accommodation:** None.

**Response B:** The appliance limit was increased from two to three. Entertainment appliances such as radios and televisions have always been viewed as an incentive linked to the Inmate Work and Training Incentive Program (IW/TIP). However, as an additional incentive toward reduction in security level, inmates assigned to Levels I and II may be able to possess a battery operated radio/CD player without it counting toward their appliance limit. In addition, musical instruments, like entertainment appliances, have always been linked to the IW/TIP as a programming incentive. This is true of musical instruments as well. Use of institutional power resources generally defines an appliance, but exceptions to this include battery operated entertainment appliances for Levels III and IV and musical instruments.

#### **COMMENTER #66:**

**Comment A:** Commenter states that taking away television at Level II institutions is a huge mistake that will be detrimental to inmates' well being. Commenter states that many inmates who do not get visitors use television as their only contact with the outside world. Commenter states that boredom, stress, and tension will be increased. That it is wrong and foolish to remove television in prisons where very little other comfort, education, or rehabilitation is available.

**Accommodation:** None.

**Response A:** Televisions have not been removed from Level II institutions. However, where personal televisions may be permitted by the APPS, the institution may restrict this based upon safety and security issues as typically found in a dormitory setting. Inmates have access to large televisions in common areas provided by the facility.

**Comment B:** Commenter states that overcrowding in prisons calls for more water, electricity, medical care, and other basic necessities. That the cost of adding more electrical outlets for these needs will be less expensive than processing the large amount of 602 appeal forms that will occur if televisions are taken away. Commenter states that it is her understanding that one second-level appeal costs taxpayers \$1,000.

**Accommodation:** None.

**Response B:** Commenters assumptions are not correct. In addition, funding for responses to inmate appeals already exists. There is no current funding for physical plant improvements on the scale required for additional electrical outlets.

**COMMENTERS #67 AND #68:**

**Comment A:** Commenters state that too much discretion is given to local institutions for requesting local exceptions to property lists. The local exceptions rule should be limited and that if it is not, the entire agenda behind the uniform inmate property matrix is useless. Commenters state that stricter local exceptions should be implemented, and existing ones should be reassessed. Commenters give clear electric typewriters as an example, stating that there is no reason that Mule Creek and Pleasant Valley should disallow one brand of typewriter in favor of a more expensive, inferior typewriter based on local exceptions. Commenters contend this unfairly creates a typewriter monopoly. Commenters state that local exceptions adversely impacts inmates and their families by this cost differential.

**Accommodation:** None.

**Response A:** Exemptions are granted only if there is a unique situation at an institution that does not exist elsewhere in the Department. Mule Creek State Prison and Pleasant Valley State Prison do not have any Exemptions granted relative to typewriters.

**Comment B:** Commenters state that local exceptions are implemented without a high enough standard of reason. That they bypass the APA and public hearings, thus not allowing concerned inmates and citizens to voice objections.

**Accommodation:** None.

**Response B:** See Commenter #1, Response A and Commenter #54, Response B.

**Comment C:** Commenters state that an exorbitant price passed on to inmate families by vendors is unfair. Vendors purchase their merchandise at wholesale prices, and are then allowed to add a ten percent markup on top of retail prices, creating a twenty to forty-five percent markup for products, when inmates and their families are typically in a lower income bracket to begin with. Commenters state that CDCR should determine a more reasonable mark-up for vendors to not exploit inmates and their families who are forced to buy only these products.

**Accommodation:** None.

**Response C:** Vendors' prices are subject to an annual cost comparison that samples vendor merchandise in regular retail outlets throughout the State. From these comparisons, a statewide median is developed which Departmental vendors are allowed to exceed by no more than ten-percent. This ten-percent is permitted because of the stringent security measures vendors must employ that regular retailers do not. Even with this ten-percent allowance, the maximum allowable limit is below the regular retail prices at certain retailers. In addition, most vendors are below this price because of competition from other vendors.

**Comment D:** Commenters state that the APPS should permit regular sized, clear bags of cereal and not single-serving packets. Commenters state it takes 26.6 single-servings of cereal to equal a 20-ounce clear bag of cereal, thus causing an inmate to pay four times as much when purchasing single-serving packets. Commenters also state that single-serving packets are not clear, whereas regular sized cereal bags are. Commenters state that it is nonsensical to claim Safety and Security when regular size cereal is in clear bags; granola and chips are permitted in regular cereal bags, and sold in canteens in bags of the same size or larger.

**Accommodation:** None.

**Response D:** Cereals were restricted to individual serving sizes as the result of vector control concerns. However, this issue is scheduled for the next review and revision of the APPS when the Department will consider once again permitting the large size cereal boxes. This is the result of the nature of the APPS reflecting the current needs of facilities.

**COMMENTS #69:**

**Comment A:** Commenter states that he is all for the new property regulations so long as all Exemptions and requests for Exemptions are denied. Commenter asks how institutions at the same level have more and less restrictions on property. Why should one institution be allowed to restrict electrical appliance when another does not? Isn't the purpose of these regulations to standardize property by security level and gender?

**Accommodation:** None.

**Response A:** One of the main goals of the property regulations is standardization of inmate property. This reduces the confiscation of property when an inmate transfers between facilities. However, due to differences in physical construction such as buildings made of wood that are flammable or lack of electrical outlets in a dormitory setting, certain Exemptions must be made as a safety concern. Regarding gender differences, see Commenter #2, Response D and Commenter #64, Response A.

**Comment B:** Commenter states that he is an asthmatic and has a tendency to stop breathing while sleeping. Commenter sleeps with a machine to regulate breathing and requires an electric fan and light as medical equipment. Commenter states that while his medical equipment is not jeopardized, the ability to keep air circulating and see his breathing machine at night are jeopardized by the AC appliance Exemption requested by ASP.

**Accommodation:** None.

**Response B:** The medical device is not counted as an appliance. Inmates are allowed to possess up to three more appliances. This could include any combination of a fan, light, television, radio, etc. In addition, inmates can always request transfer. A medical reason is valid.

**Comment C:** Commenter states that it is a misconception that inmate electrical power usage is high at ASP. Commenter urges the disallowance of all Exemptions until there are many incidents that justify a change, and even then, Exemptions should be on an individual basis.

**Accommodation:** None.

**Response C:** Exemptions at ASP are not based upon power usage, but out of safety concerns, for example, extension cords creating tripping hazards in a dormitory setting.

**Comment D:** Commenter asks if CDCR has given any thought to hazardous waste involved in disposing of so many batteries when electrical appliances are not allowed.

**Accommodation:** None.

**Response D:** Battery recycling is a standard part of the Department's Recycling and Salvage Program. In many dormitory situations, the only alternative would be to disallow any type of appliance.

**COMMENTS #70: (Plus 6 additional signatures)**

**Comment A:** Commenter states that he is opposed to the prohibiting of lotion to SHU inmates. Commenter states that this is arbitrary and cruel, and that inmates are subjected to pain and suffering by not being able to lubricate their skin. That cold weather without lotion causes inmates' skin to crack and bleed. Commenter states that CDCR has not attempted to find a less restrictive alternative to accomplish the goal of reasonable security, despite Penal Code Sections 2600 and 2601 requiring that. Commenter states that if CDCR feels so strongly about lotion posing a security risk with SHU inmates, then a less restrictive measure should be imposed, which is required by State law.

**Accommodation:** None.

**Response A:** If there is a medical need for a lotion, such as in the case the Commenter cites of cracked and bleeding skin, medical staff will issue the inmate a lotion. The personal possession of lotions is generally restricted in SHU due to the high level safety and security concerns in a SHU housing environment. With positive behavior, a SHU inmate will be returned to a General Population setting where lotions are permitted.

**COMMENTS #71:**

**Comment A:** Commenter states that there is no incentive for being a positive programmer at ASP when programmers and non-programmers are given the same appliance privileges. Commenter has known inmates who received multiple disciplinary infractions just to be transferred to a different prison with more privileges. Commenter states that all of his electrical appliances were confiscated when he arrived at ASP.

**Accommodation:** None.

**Response A:** The Department is continually working on enhancing privileges for programming and reduction in security level. However, safety and security issues in a dormitory setting must take precedence.



**Comment B:** Commenter asks that ASP's Exemption request be denied. Commenter states he cannot afford batteries for the operation of a walkman. With his extremely limited income, he is only able to buy basic hygiene and food items and that is only because he is lucky enough to have a job. Commenter asks how he can be expected to purchase batteries. Commenter states his only water-heating element has broken down, and his food and coffee are warm at best. Commenter has resorted to using homemade measures, which are far more of a security hazard. Commenter states that he understands that prison is supposed to be stressful, but that these restrictions are unnecessary and arbitrary.

**Accommodation:** None.

**Response B:** The possession of appliances is a privilege and not guaranteed. The Department provides all inmates with basic hygiene necessities, clothes, linen, and three heart healthy meals per day.

**COMMENTER #72:**

**Comment A:** Commenter states that he is opposed to Avenal and Chuckawalla State Prison receiving Exemptions. Commenter states that the energy consumption by inmates is statistically zero percent compared to the energy usage of CDCR itself.

**Accommodation:** None.

**Response A:** No Exemptions have been granted based upon energy consumption. Energy use for inmates is not limited to their personal property. The Department notes that cooling provided to inmate housing areas in desert facilities such as Chuckawalla State Prison in the summer involves extensive energy use and expense borne by the California taxpayer. Likewise, waste water treatment, food service, laundry, heating and lighting are energy expenses for the benefit of all inmates, paid for by taxpayers.

**COMMENTER #73:**

**Comment A:** Commenter states that he is an inmate and human rights attorney who was personally involved in decisions made by CDCR and legislators that introduced educational videos via intra-video services at Pelican Bay Prison's SHU. Commenter states that property regulations prohibiting inmates from receiving education related correspondence is unsound, unwise, and contradictory toward CDCR's goal of public safety and rehabilitation. Commenter states the goal of reorganizing CDCR was to be rehabilitative and not punitive, and similarly, SHU programs according to CDCR and State and Federal law, are for segregation and not punishment.

**Accommodation:** None.

**Response A:** See Comment #1, Comment B Accommodation.

**COMMENTER #74:**

**Comment A:** Commenter states that because the Notice does not include a list of what was previously allowed it is nearly impossible to construct a comment, so will confine the comments to items allowed for SHU inmates. Commenter states that as long a SHU inmate keeps their property within the allowed cubic feet, there can be no reason to reduce the number of some allowed items compared to the general population.

**Accommodation:** None.

**Response A:** SHU inmates have proven to be extreme examples of negative behavior. The cells of these inmates must be searched thoroughly and frequently for contraband. While there is a general limit of six cubic feet, certain items must be limited in addition to this limit due to the additional safety and security issues inherent in SHU.

**Comment B:** Commenter states that the most outrageous change presented is not allowing inmates to take correspondence courses. Commenter asks how this could possibly help the prison system, inmates, inmate families, and the population of California at large. If an inmate seeks to make him or herself better through educational courses approved by prison education staff, it can only be beneficial to everyone. Commenter states that recidivism rates are reduced by receiving an education in prison. SHU inmates are confined to their cells for many more hours a day than the general population inmates, and have very few positive activities to choose from. Commenter states that unless CDCR has decided watching television, listening to the radio, and sleeping are positive activities, the rules should reflect the need for SHU inmates to have access to materials for reading, writing, and studying. Commenter objects to the grouping of books, magazines, and newspapers together, and to SHU inmates not being allowed the same amount of reading material as general population inmates.

**Accommodation:** See Commenter #1, Comment B Accommodation.

**Response B** See Commenter #1, Response B, C and D.

**Comment C:** Commenter states that SHU inmates already have severe restraints on contact with loved ones, and that reducing writing materials restricts inmates' outlets for positive personal expression and maintenance of critical family ties. Commenter states it makes no sense to reduce the amount of paper as long as the overall volume limit is adhered to. Commenter states that the restriction on paper will burden inmate families as they will need to send more paper at higher rates of postage. Commenter also sees no safety or security reason or any reason given in the ISOR for denying SHU inmates a calendar to write special occasions on or note the passage of time through the seasons of the year.

**Accommodation:** None.

**Response C:** See Commenter #74, Response A. In addition, because of the nature of the APPS, this request to permit calendars for all SHU inmates will be reviewed during the next scheduled update in 2009.

**Comment D:** Commenter states that the Notice of Change to Regulation for property was not posted in the SHU pod where her husband lives and he and other SHU inmates were not able to comment on time. Commenter states that she is informed by her husband that it is impossible for all SHU inmates to read every Notice in the law library, and asks that the procedure for posting Notices be reviewed and communicated to staff at Pelican Bay State Prison.

**Accommodation:** None.

**Response D:** See Commenter #4, Response B.

**COMMENTER #75:**

**Comment A:** Commenter states that the APPS contain language that permits local institutions to immediately prohibit an approved item due to safety or security issues. Statements in the APPS such as, “Upon approval of warden,” “Warden discretion,” or words to that effect allow each warden to permit or prohibit items without proper administrative review. Commenter contends these statements delegate authority to the warden to disregard codified administrative rules without any oversight or review and these provisions would violate the APA. Commenter recommends that statements such as “Upon approval of the warden” and “Warden’s discretion” be removed from the APPS and sections containing those phrases be revised. Commenter states that the phrase “immediate implementation” by institutional staff does not describe how approved vendors or the inmate population are notified of this action and this allows the warden to prohibit items authorized by the Deputy Director, DAI and codified in Administrative law via the CCR, Title 15. Commenter also contends there is no description of how an item that was prohibited is re-authorized and this lack of clarity could lead to abuse. Commenter contends this provision also violates the provision of the APA. Commenter suggests that language be adopted for staff to contact the Chief of the Standardized Procedures Liaison Unit with the request and proper documentation, and this chief would then be responsible for contacting vendors and inmates.

**Accommodation:** None.

**Response A:** Safety and security are paramount. As a result, when an item of inmate property raises a safety and security issue the local administration has the ability to temporarily act on it immediately. This action must be followed up with the submission of an Exemption request to the Standardized Procedures Unit (SPU) where it will be reviewed. If approved, the SPU does contact the vendors and the local facility. It remains the local facility’s responsibility to notify the inmate population. Penal Code Section 5058(c)(1) allows for local rules to be developed that are unique to individual institutions, which are not subject to the APA. Statute also provides that wardens may make temporary rules and regulations, in case of emergency, to remain in force until the Department otherwise provides.

**Comment B:** Commenter states that the APPS allow for female inmates at the same custody level as male inmates to have a wider variety of personal property, including jeans and five types of footwear. Commenter states that this different treatment of inmates at the same custody level should be corrected before the APPS are incorporated as part of the Title 15. Commenter states

implementing this Notice of Change to Department Regulations would undermine the original intent of the regulations, which was to standardize the property provisions on a statewide basis.

**Accommodation:** None.

**Response B:** See Commenter #2, Response D. Additionally, Female Offender Programs and Services, mission based region controls their own property matrix.

**COMMENTERS #76 - #112 (plus 7 Additional Signatures)**

**Comment A:** Commenters state that they are opposed to Avenal and Chuckawalla Valley State Prisons having Exemptions granted concerning AC appliances. Commenters state that the standard should be the same at all institutions so that inter-facility transfers do not materially affect inmates. Commenters state that CDCR has come up with five standards of property based on custody level and gender. Commenters ask where the incentive to modify behavior is when an inmate reaches Level II custody and still cannot have an appliance.

**Accommodation:** None.

**Response A:** Department is continually working on enhancing privileges for programming and reduction in security level. However, safety and security issues in a dormitory setting must take precedence.

**Comment B:** Commenters state that regulations allow for 198 batteries per inmate, per year at ASP. 8,292 inmates at 198 batteries per year in the absence of AC appliances equal 1,622 batteries per year, all of which constitute hazardous waste, and must be disposed of using hazardous waste disposal procedures. Commenters state that this hazardous waste disposal issue is an excellent reason to continue allowing AC appliances.

**Accommodation:** None.

**Response B:** The restriction on AC appliances is the result of safety concerns of extension cords and other electrical cords in a dormitory setting. In many dormitory situations, the only alternative would be to disallow any type of appliance. In addition, battery recycling is a standard part of the Department's Recycling and Salvage Program.

**COMMENTS #113:**

**Comment A:** Commenters contend that they represent the Prison Legal News (PLN) in a lawsuit against employees of the Department for violations of PLN's First and Fourteenth Amendment rights. Commenters state that a copy of the complaint is attached to this comment as Exhibit A. Commenters state that the complaint alleges various violations of law based on the Department's policies, procedures, and practices regarding inmate mail and property. Commenter contends that prior to the lawsuit, the PLN and the Department reached a Settlement Agreement that seeks to resolve a few of the issues that are part of the proposed emergency regulations regarding inmate property. Commenters state that the Settlement Agreement prohibits the use of vendor labels and defines approved vendors as any publisher or

bookstore that has a mail order business. Commenters state that a copy of the Settlement Agreement is attached to this comment as Exhibit B.

**Accommodation:** None, except as discussed in response to Comments B and C immediately below.

**Response A:** The Department fully intends to comply with the Settlement Agreement mentioned above. Exhibits A and B, which were attached to the Commenters specific comments are copies of the entire complaint against the Department and settlement agreement reached with the Department. The language and comments specific to the proposed regulations were summarized pursuant to GC Section 11346.9(a)(3). However, the majority of the Exhibits are either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response outside of the accommodation given in Responses B and C below.

**Comment B:** Commenters contend that the proposed regulations do not adequately comply with a couple of the settlement terms that were reached. The Settlement Agreement clarified that “legal material” includes Prison Legal News publication. Commenters state that legal materials include law-related books, law-related documents, law-related publications, and court transcripts. Commenters state that existing regulations regarding inmate mail already make clear that inmates may purchase publications from any publisher or bookstore that has a mail order business. Commenters suggest that language be added to Section 3190(i)(2) so that the regulations are in compliance with the Settlement Agreement.

**Accommodation:** Full accommodation. A Notice of Change to Text was sent on November 5, 2007, regarding this change.

**Response B:** In keeping with the Settlement Agreement reached between PLN and the Department, an accommodation has been made to include specific language in Section 3190(i)(2) regarding Approved Vendor Lists and language specific to inmates receiving legal publications from any publisher or book store that does mail order business.

**Comment C:** Commenters contend that current Section 3138(f)(1) specifies that inmates may receive publications from “any publisher or book store which does mail order business...” Commenters state that Section 3190(i)(7) in the proposed regulations should include the same language.

**Accommodation:** Full accommodation. A Notice of Change to Text was issued on November 5, 2007, regarding this change.

**Response C:** In keeping with the Settlement Agreement reached between PLN and the Department an accommodation has been made to include specific language in Section 3190(i)(7) regarding allowing all publications. Books and magazines considered contraband are subject to Section 3006.

**COMMENTERS #114 through #153 (plus 1760 additional signatures):**

**Comment A:** Commenters state that ASP's Exemption threatens the safety and security of staff and inmates and is the most overcrowded of all the prisons, and that restricting electrical appliances contributes to the overcrowding tension. Commenters state that inmates will deliberately misbehave to ensure transfer to other institutions that allow appliances in their SHU and ASU units. Commenters state that dorm officers would prefer inmates to occupy themselves with televisions and radios rather than getting into trouble.

**Accommodation:** None.

**Response A:** The Department's overall approach to inmate work incentive, behavior, safety, security, and classification is based upon a system of increasing privileges and decreasing restrictions in order to reward positive behavior. While much of this is subject to the limitations imposed by physical construction, the Department is continually looking for additional incentives. Once such incentive is credit earning status of inmates that exhibit good behavior. This is lost upon placement in ASU and SHU.

**Comment B:** Commenters state that the Exemption is based on unsubstantiated and untrue reasons. Commenters state that the warden's June 2005 Exemption Request was submitted with apparently, no required supporting data, such as incident reports, physical plant limitations, etc., and gives four reasons for allowing NO electrical appliances. The Exemption is unsubstantiated and untrue as follows: Reason 1: Avenal has the same configuration as other prisons that are allowed electric appliances. Reason 2: There is no supporting data for supposed "unusual electrical problems." Reason 3: There have never been fires or failed circuit breakers from any approved appliance at Avenal, and Reason 4: No one is asking for more outlets in the E-Building or gym since they are temporary, emergency housing units.

**Accommodation:** None.

**Response B:** Exemption requests are granted when a unique situation exists. The removal of AC appliances in dormitories is based on safety issues.

**Comment C:** Commenters state that the reasons for the Exemptions were prepared in secret and on an emergency basis and thus were not properly vetted with feedback and analysis.

**Accommodation:** None.

**Response C:** See Commenter #1, Response A.

**Comment D:** Commenters state that the Exemption is discriminatory against ADA inmates, because many of these inmates are totally or sufficiently disabled and cannot work or perform the jobs that have pay numbers, and cannot afford highly expensive batteries for battery operated appliances. Commenters also state that ADA inmates with breathing problems (asthma, etc.,) need electric fans to deal with the extreme lack of ventilation in the buildings. Even battery-operated fans cannot sufficiently ventilate. Commenters state that these inmates are being

discriminated against since they can't get to a prison that allows cheap-to-operate and effective electric fans.

**Accommodation:** None.

**Response D:** Each local facility provides fans in addition a variety of methods for reducing building temperatures. Personal fans are not a necessity.

**Comment E:** Commenters state that ASP's Exemption violates Title 15, Section 3044's nondiscrimination and incentive programs. Commenters state that Section 3044(c)(5) says that "No inmate or group of inmates shall be granted privileges not equally available to other inmates of the same custody classification..." Commenters state that ASP is the only prison with the same custody classification as other prisons that does not allow electric appliances, and the Exemption also violates Title 15 Section 3044(c)(8) by denying Privilege Group A and B inmates electric appliances, despite good behavior and satisfactory work/training

**Accommodation:** None.

**Response E:** CDCR does not believe that Title 15, Section 3044 has been violated. Title 15 Section 3190(a) provides for the possession of personal property based on a variety of factors, including privileges established under Section 3044 as well as security level and/or institution mission. When the institution mission involves dormitory housing, AC appliances are usually restricted for safety and security reasons. The physical construction of dormitory housing as found at ASP and throughout most of the department precludes the use of extension cords and television cable outlets as this would represent a tripping hazard and endanger the safety of staff who had to respond to such an area in an emergency. This is a long-standing policy that historically varied from facility to facility, based on physical limitations. Section 3190(i)(1) states that inmates assigned to Privilege Groups A and B may possess up to three appliances. The use of the permissive term "may" exists in recognition that Privilege Groups A and B inmates may not be able to possess these appliances in all situations.

**Comment F:** Commenters state that one of the major goals of the proposed regulation is to "allow for a standardized personal property schedule" and ASP's Exemption does not conform to the regulations goal of "Standardized" personal property on electric appliances. Commenters state that inmates who transfer to Avenal have their electric TVs, Radio/CDs, fans, lamps, and typewriters taken away even when they remain Privilege Group A and B inmates.

**Accommodation:** None.

**Response F:** See Commenters #51 and #52, Response A.

**Comment G:** Commenters state that ASP's Exemption discriminates against poor inmates due to highly expensive batteries. Inmates cannot legally get enough money or batteries to run battery-operated appliances anywhere near the length of time they would run and use electric appliances. The costs are a burden to any inmates and particularly discriminatory against poor inmates. ASP's Privilege Group A and B inmates should have the same no-cost electricity for electric appliances the other prisons have for the same privilege groups.

**Accommodation:** None.

**Response G:** See Commenter #61, Response B. In addition, see Commenters #114-153, Response E.

**Comment H:** Commenters state that ASP's Exemption adversely affects inmates taking heat-sensitive (psychotropic) medication and that the battery operated fans do not move enough air to do any good.

**Accommodation:** None.

**Response H:** See Commenter # 61, Response B.

**Comment I:** Commenters state that if ASP's Exemption is rescinded, it would not require any new wiring nor any unusual expense because the wiring is already in place. Commenters state they are not asking that the temporary GYM housing nor emergency E-Buildings be refitted with additional wiring. Commenters ask that Avenal provide electricity to run inmates' electric appliances like all the other CDCR prisons do.

**Accommodation:** None.

**Response I:** The Exemption granted to ASP has been granted only to dormitory housing and does not impact celled housing. This is based on safety concerns inherent to physical plant limitations.

## **COMMENTS RECEIVED DURING FIRST 15-DAY RENOTICE**

### **COMMENTER #1R:**

**Comment A:** Commenter states that revisions to the regulations allow for one battery re-charger and eight batteries, but that all battery-operated televisions sold to inmates require at least ten batteries to operate. Commenter states that the previous regulations allowed sixteen batteries per inmate and made it possible for inmates to possess the variety of batteries that various appliances call for, and eight batteries are not enough.

**Accommodation:** None.

**Response A:** See Commenter #1, Response I. This comment does not pertain to changes made in the First 15-Day Renotice.

### **COMMENTERS #2R and 3R:**

**Comment A:** Commenters asks what good the revisions to Sections 3190 and 3191 are if they are not applied to all institutions. Commenters states that it is impossible to run a TV on eight batteries, and that these batteries constitute hazardous waste that Avenal does not dispose of properly.



**Accommodation:** None.

**Response A:** See Commenter #1, Response I. This comment does not pertain to changes made in the First 15-Day Renotice.

**Comment B:** Commenters state that regulations are in violation of the Title 15, which states that there shall be no mass punishment. Commenters state that all inmates are being punished for abuse done by individual inmates.

**Accommodation:** None.

**Response B:** See Commenter #1, Response I. This comment does not pertain to changes made in the First 15-Day Renotice.

**COMMENTS #4R:**

**Comment A:** Commenter states that revisions to Sections 3190 and 3191 are not made uniform between same-level institutions. Where is the incentive for inmates to bring their points down and positively modify behavior? Commenter asks what penological interest is served by allowing same Level II to have AC appliances while other Level II's are denied AC appliances. Commenter asks, wasn't the purpose of new property regulations to standardize inmate property by security level and gender?

**Accommodation:** None.

**Response A:** See Commenter #1, Response I. This comment does not pertain to changes made in the First 15-Day Renotice.

**Comment B:** Commenter contends the Regulation and Policy Management Branch should revoke all currently granted Exemptions on the grounds of fairness and only apply the change to the specific individual involved in the incident. Commenter does not like CDCR's "one solution fits all" philosophy. Exemptions to policy should be on an inmate-by-inmate basis.

**Accommodation:** None

**Response B:** See Commenter #1, Response I. This comment does not pertain to changes made in the First 15-Day Renotice.

**Comment C:** Commenter asks if thought was given to the hazardous waste caused by ASP's improper disposal of used batteries. Commenter states that rather than answer 602s about insufficient outlets in an overcrowded institution, it would be easier to request an Exemption to policy and states if ASP sold surge suppressors in canteen, the outlet issue and hazardous disposal of batteries issue goes away.

**Accommodation:** None.

**Response C:** See Commenter #1, Response I. This comment does not pertain to changes made in the First 15-Day Renotice.

**COMMENTER #5R:**

**Comment A:** Commenter asks if language in revisions to Section 3191(c): “property that is considered contraband pursuant to Section 3006(a) or (c) shall be retained by staff as may be required by ongoing investigation or court order.” includes the grievance/appeal process.

**Accommodation:** None.

**Response A:** The intent was to address contraband and this language was changed as follows: “Property that is considered contraband pursuant to section 3006(a) or (c) shall be retained by staff as may be required by ongoing investigation or court order. Following the completion of all disciplinary, investigative, or court requirements, the contraband property shall be disposed of according to institutional/facility procedures.” This includes the grievance/appeal process.

**Comment B:** Commenter states that the allowance of correspondence courses for male and female SHU inmates is valuable; however, Level III & IV SHU inmates are not included. Commenter asks why there is a “Yes” notation for ASU, but not SHU, and if this is a mistake.

**Accommodation:** Accommodation granted. The APPS was modified in the category of correspondence courses. The change was made from zero to “Yes” on page 29, which allows correspondence courses for SHU inmates in Level III and IV Male Institutions.

**Response B:** This was an oversight on the first 15-day Renotice. SHU inmates are being permitted to have correspondence courses. A 2<sup>nd</sup> Notice of Change to Text was sent on March 3, 2008, regarding this change.

**Comment C:** Commenter is concerned about the proposed inmate property regulation, its fairness towards inmates, and feels the APPS are still gender discriminating against the male inmate population and the female inmate property list provide more gender neutral items. Commenter states Section 3044(c)(5) provides for equal privileges for “all” inmates in the same privilege group: however, female inmates enjoy much more property privileges than male inmates.

**Accommodation:** None.

**Response C:** See Commenter #1, Response I. This comment does not pertain to changes made in the First 15-Day Renotice.

**Comment D:** Commenter states he has devised (and attached) a propositional list that will give equality to the male inmate for all security levels/institution mission that provides for each individual inmate to be responsible for their own property. Commenter states this proposition also provide inmates equally allowable property according to privilege group and volume, not to exceed six cubic feet, as the only two amount restriction criteria. Commenter states when he is limited by the APPS restrictions and runs out of supplies, he is forced to go without proper hygiene and compliance with 3190(e), 3094, and 3044 will stop the arbitrariness and improve

hygiene and health habits. Commenter hopes the RPMB revises the original text again and reflect equality of gender-neutral items.

**Accommodation:** None

**Response D:** See Commenter #1, Response I. This comment does not pertain to changes made in the First 15-Day Renotice.

**COMMENTS RECEIVED DURING SECOND 15-DAY RENOTICE**

**COMMENTER #6R:**

**Comment A:** Commenter asks why Level II inmates are allowed battery chargers that are not included as an appliance. Commenter states that Avenal will deny inmates possession of a battery charger contrary to their own battery-only appliance policy.

**Accommodation:** None.

**Response A:** See Commenter #1, Response I. This comment does not pertain to changes made in the First 15-Day Renotice.

**COMMENTER #7R:**

**Comment A:** Commenter asks why the general population columns have “1” listed for number of correspondence courses, whereas ASU and SHU columns have “yes” listed. Commenter states that all inmates should have access to correspondence courses.

**Accommodation:** None.

**Response A:** The request to change “1” to “Yes” for General Population inmates is being taken under consideration for the next revision of the APPS, in 2009.

**Comment B:** Commenter states that there is a discrepancy between the text on pages 12 and 13 of the re-notice: Page 12 has a “0” for “miscellaneous items for Level III and IV inmates” in the SHU column and a “yes” in the ASU column for correspondence courses. Page 13 has a “yes” for both ASU and SHU in the “miscellaneous items for Level III and IV inmates” in the correspondence courses. Commenter states they cannot tell if SHU inmates will or will not be allowed access to correspondence courses, and that CDCR should allow the public to comment again once this is clarified.

**Accommodation:** See Commenter #5R, Comment B Accommodation.

**Response B:** See Commenter #5R, Response B.

**COMMENTS RECEIVED DURING SECOND 15-DAY RENOTICE**

**COMMENTER #1RR:**

**Comment A:** Commenter states that the 2<sup>nd</sup> Renotice was not received until March 13, wasting more than half the public comment period.

**Accommodation:** None.

**Response A:** The Department has complied with all mailing requirements as established in CCR, Title 1, Section 44.

**Comment B:** Commenter states that CDCR continues to honor institution requests for exemption and does not reply to letters asking the justification for Avenal's exemption to policy on AC appliances. Commenter asks if CDCR is hiding something, and requests justification for these negative changes to inmate environment. Commenter asks that all requests for exemption to policy regarding AC appliances be revoked.

**Accommodation:** None.

**Response B:** See Commenter #1, Response I. This comment does not pertain to changes made in the Second 15-Day Renotice.

**COMMENTS #2RR & 3RR:**

**Comment A:** Commenters state that he is opposed to all exemptions to the standard Level II inmate personal property, but specifically to the exemption to AC appliances for dorms, because the use of appliances in dorms is a calming factor for over-crowded, under-ventilated facilities.

**Accommodation:** None.

**Response A:** See Commenter #1, Response I. This comment does not pertain to changes made in the Second 15-Day Renotice.

**Comment B:** Commenters state that battery disposal is costly and at the expense of both public and private entities, and is more expensive than the cost of regular electricity use by inmates. Commenter states that if batteries are being disposed of illegally, federal regulations are being violated, and the institutions are subject to fines and oversight by the EPA.

**Accommodation:** None.

**Response B:** See Commenter #1, Response I. This comment does not pertain to changes made in the Second 15-Day Renotice.

**Comment C:** Commenters ask that all Level II property regulations be standardized to facilitate transfer between institutions within the same security level. Commenters state that all Level II inmates, whether in cells or dorms, should be treated equally.

**Accommodation:** None.

**Response C:** See Commenter #1, Response I. This comment does not pertain to changes made in the Second 15-Day Renotice.

**COMMENTER #4RR:**

**Comment A:** Commenter states that changes to regulations are minor considering the APPS are still endorsing gender discrimination against male inmates. Commenter quotes the Title 15, Section 3044(c)(5) as stating “No inmate shall be granted privileges not equally available to other inmates of the same custody classification and assignment who would otherwise be available for the same privileges.” Commenter says the APPS is in direct violation by granting gender neutral items to females and not males, such as denim jeans, hygiene products, hair care products, appliances, additional footwear, and sugar products.

**Accommodation:** None.

**Response A:** See Commenter #1, Response I. This comment does not pertain to changes made in the Second 15-Day Renotice.

**Comment B:** Commenter states that the hygiene products are the most important issue, as male inmates are continuously struggling to maintain cleanliness in an environment where they are exposed to contagious diseases. Commenter states that these restrictions to hygiene products are cruel and unusual punishment and contradictory to Section 3091.

**Accommodation:** None.

**Response B:** See Commenter #1, Response I. This comment does not pertain to changes made in the Second 15-Day Renotice.

**Comment C:** Commenter states that there is class-action writ of mandate petition filed in the CA Supreme court on behalf of the entire male inmate population regarding gender-neutral property products, and that it would become moot if CDCR would make necessary changes to equalize gender-neutral items among male and female inmates.

**Accommodation:** None.

**Response C:** See Commenter #1, Response I. This comment does not pertain to changes made in the Second 15-Day Renotice.

**COMMENTER #5RR:**

**Comment A:** Commenter states that new language has the same flaws as the original, and that the original was adopted without stating reasons, as do the renotices, and that none comply with the APA, and are thus underground. Commenter states that there is no codified exception that applies to any of the APPS, and just because the original numeration has been dropped, it is no more valid than when the Michael Price Determination was issued.

**Accommodation:** None.

**Response A:** See Commenter #53, Response A.

**COMMENTS RECEIVED DURING THIRD 15-DAY RENOTICE**

**COMMENTER #1RRR:**

**Comment A:** Commenter states he agrees that it is appropriate to remove Salinas Valley State Prison Levels I and II housing from the High Security and Transitional Housing (HSTH) mission. Commenter suggests Facilities “A” and “B” should also be taken out from under the HSTH umbrella because both of these yards are of the 270° design and house only sensitive-needs inmates who have not proven to be unsuitable for placement in less restrictive facilities. Commenter asserts Facility B is a Level-III SNY (commenter does not define SNY) and the HSTH mission is not applicable to the population of medium-security prisoners who have not proven to be unsuitable for placement in less restrictive facilities. Commenter states Facility A is a high-security Level IV SNY.

**Accommodation:** None.

**Response A:** Facilities within an institution are subject to security requirements inherent to that specific institution and mission-based region. Due to physical construction limitations, the facilities you reference are correctly identified. It is important to note that institution and facility missions are subject to change throughout the year. As a result, this issue is subject to annual review and evaluation.